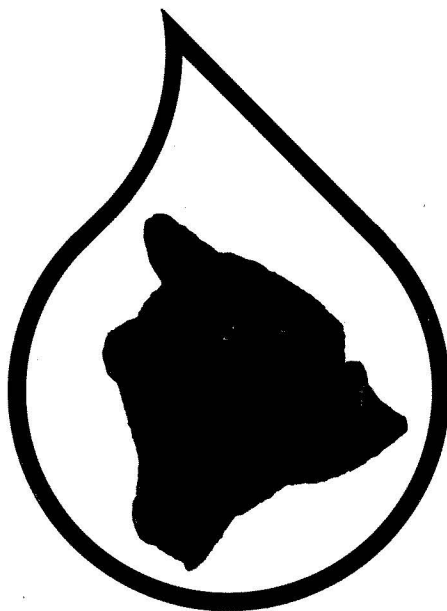


GENERAL REQUIREMENTS AND COVENANTS



**DEPARTMENT OF WATER SUPPLY
COUNTY OF HAWAII**

JUNE, 1986

GENERAL REQUIREMENTS AND COVENANTS
OF THE
DEPARTMENT OF WATER SUPPLY
COUNTY OF HAWAII

JUNE 1986

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Appendix A SAMPLE: CORPORATE RESOLUTION
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 PROPOSAL ENVELOPE FORM

Appendix D SAMPLE: NON-GRATUITY AFFIDAVIT

SECTION 1 - ABBREVIATIONS AND DEFINITIONS

Whenever the following terms or pronouns are used herein, or in other contract documents where these requirements are applicable, the intent and meaning shall be interpreted as follows:

1.1 - ABBREVIATIONS

AASHTO	- The American Association of State Highway and Transportation Officials
AGC	- Associate General Contractors of America
IO3	- American Institute of Architects
ANSI	- American National Standard Institute
ASCE	- American Society of Civil Engineers
ASTM	- American Society for Testing Materials
AWG	- American Wire Gage
AWS	- American Welding Society
AWPA	- American Wood-Preservers' Associations
AWWA	- American Water Works Association
FHWA	- Federal Highway Administration
HRS	- Hawaii Revised Statutes
NEMA	- National Electrical Manufacturer's Association
UL	- Underwriters' Laboratories, Inc.
VECP	- Value Engineering Change Proposal

1.2 - DEFINITIONS

<u>Addenda</u>	A written document which may be issued by the Manager during the bidding period involving changes to the plans and specifications which shall be considered and made a part of the contract.
<u>Advertisement</u>	A public announcement inviting bids for work to be performed or materials to be furnished.
<u>Amendment</u>	A written document properly executed by the Contractor and the Chairman issued to amend the existing contract between the Commission and the Contractor.
<u>Bid or Proposal</u>	The offer of the bidder submitted in the prescribed manner to furnish all labor, equipment, and materials and to perform the specified work in accordance with the provisions of the plans and specifications within the contract time prescribed therein for the consideration of payment at the prices stated in the proposal.

Bidder

Any individual, partnership, firm, corporation, or joint venture licensed by the State to perform the work contemplated, submitting directly or through a duly authorized representative or agent, a proposal for the work.

Calendar Day

Any day shown on the calendar, beginning at midnight, and ending at midnight 24 hours hence. If no designation of calendar or working day is made, "day" shall mean calendar day.

Chairman

Chairman of the Water Commission of the County of Hawaii.

Change Order

A written order issued by the Chairman to the Contractor requiring the contract work to be performed in accordance with a change or changes that may involve an adjustment in contract time and price or requiring performance of any unforeseen work essential to complete the contract. A change order signed by all parties to the contract constitute a supplemental agreement.

Commission

The Water Commission of the County of Hawaii.

Contract

The written instrument executed by the Contractor and the Commission, by its Chairman, by which the Contractor is bound to furnish all labor, equipment, and materials and to perform the specified work within the contract time stipulated, and by which the Commission is obligated to compensate the Contractor therefore at the prices set forth therein. The contract shall include the Invitation to Bidders, Notice to Bidders, Instruction to Bidders, Proposal, Certificate of availability of funds, Water System Standards, List of Subcontractors, General Requirements and Covenants, Special Provisions, Plans, Technical Specification, Addenda, if any, and Contract Bonds and also any and all amendments and change orders which are required to complete the construction in an acceptable manner.

Contract Bond

The approved form of security furnished by the Contractor and his surety to guarantee the completion of the work in accordance with the terms of the contract and to insure to the benefit of all claims for labor, materials and supplies used or incorporated in the work.

<u>Contract Time</u>	The time stated in the proposal and the contract given as a definite number of consecutive working days or calendar days which is an essential part of the contract. The contract time shall start on the effective date in the Notice to Proceed. Where the contract requires completion by a specific date, in lieu of number of working or calendar days, the work shall be completed by that date.
<u>Contractor</u>	Any individual, partnership, firm, corporation joint venture or other legal entity authorized to do business in the State of Hawaii, undertaking the execution of the work under the terms of the contract with the Commission, and acting directly or through his, their or its agents, employees or subcontractors.
<u>County</u>	The County of Hawaii.
<u>Department</u>	The Department of Water Supply, County of Hawaii.
<u>Equal or Approved Equal</u>	Whenever this term is used in the plans and/or specifications this shall be interpreted to mean a brand or article prequalified in accordance with Subsection 6.3 - SUBSTITUTION OF MATERIALS AND EQUIPMENT - which may be used in place of the one specified.
<u>Holidays</u>	The days of each year which are set apart and established as State holidays pursuant to Chapter 8, HRS.
<u>Inspector</u>	Authorized representative of the Manager.
<u>Invitation to Bidders</u>	See "Advertisement."
<u>Laws</u>	All Federal, State, and County Laws, ordinances, rules and regulations, and standard specifications, including any amendments thereto effective as of the date of the call for sealed bids or proposals.
<u>Letter of Award</u>	A written notice from the Manager or the Chairman to the successful bidder(s) stating that he has been awarded the contract.
<u>Liquidated Damages</u>	The amount prescribed in the General Requirements and Covenants, Subsection 8.11 - FAILURE TO COMPLETE THE WORK ON TIME - to be paid to the

Department or to be deducted from any payments due or to become due the Contractor for each working day's delay in completing the whole or any specified portion of the work beyond the contract time allowed in the contract.

Manager

The Manager of the Department of Water Supply, County of Hawaii, or his duly authorized representative.

Notice to Proceed

A written notice from the Manager to the Contractor advising him of the date on which he is to begin the prosecution of the work which shall also be the beginning of contract time.

Notice of Final Acceptance

A written notice from the Manager to the Contractor stating that the entire contract which has been completed in all respects in accordance with the plans, specifications, special provisions and any changes thereof previously authorized is accepted.

Notice of Final Settlement

The date of approval by the Manager of the final voucher for payment shall constitute the date of final settlement of the contract.

Office of the Manager

25 Aupuni Street, Room 103, Hilo, Hawaii 96720.

Plans

The contract drawings approved by the Manager, which show the location, character, dimensions, and details of the work to be done.

Post Contract Drawings

The post contract drawings are drawings issued after the contract for the purpose of clarification and/or change to the work indicated on the original plans and shall be made a part of the contract.

Project Contract Limit

The portion of the work site as may be delineated on the plans, which defines the Contractor's primary area of operation for the prosecution of the work. It does not define the exact limits of all construction that may be required under the contract.

Project Warranty

A guarantee issued by the Contractor to the Department against defects resulting from the use of defective materials, equipment, or workmanship as covered in Subsection 8.15 - GUARANTEE OF WORK.

<u>Proposal Form</u>	The form prepared by the Department on which the written offer or formal bid for the work to be done is submitted by the bidder.
<u>Proposal Guaranty or Bid Bond</u>	The cash or check or bidder's bond furnished by bidder as a warranty of good faith that he shall enter into a contract with the Commission and to execute the required bond covering the work contemplated, if the same is awarded to him as covered in Subsection 2.8 - PROPOSAL GUARANTY.
<u>Questionnaire</u>	The "Standard Questionnaire and Financial Statement for Bidders" specified forms on which the bidder shall furnish required information as to his ability to perform and finance the work.
<u>Special Provisions</u>	The specific clauses setting forth conditions or requirements peculiar to the project under consideration, which are not thoroughly or satisfactorily stipulated in the Water System Standards or in these requirements.
<u>Specifications</u>	The directions, provisions and requirements as contained in the General Requirements and Covenants, addenda, special provisions, technical specifications, and change orders pertaining to the method and manner of performing the work and to quantities of materials to be furnished under the contract.
<u>State</u>	The State of Hawaii.
<u>Sub-Contractor</u>	An individual, partnership, firm, corporation, joint venture or other legal entity which enters into an agreement with the Contractor to perform a portion of the work for the Contractor.
<u>Superintendent</u>	The responsible representative of the Contractor, present on the work site at all times during progress, authorized to receive and fulfill instructions from the Manager or his duly authorized representative.
<u>Surety</u>	The individual, firm or corporation which is bound by the contract bond with and for the Contractor to insure his acceptable performance of the contract.

Water System Standards

The Department of Water Supply (DWS) prevailing Water System Standards, Volume 1 and Volume 2, dated 1985 covering Planning, Material, Construction and Approved Materials List and Standard Details, respectively. Wherever the term Standards for Water Systems are used herein it shall have the same meaning as Water System Standards.

Work

Furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the project and the execution of all the duties and obligations imposed by the contract.

Working Day

A calendar day, exclusive of Saturdays, Sundays and State recognized legal holidays, on which weather and conditions not under the control of the Contractor shall permit construction operations to proceed for at least six (6) hours of the day with the normal working force engaged in performing the controlling item(s) of work in progress at the time, as determined by the Manager.

SECTION 2 - PROPOSAL REQUIREMENTS AND CONDITIONS

2.1 COMPETENCY OF BIDDERS

Each prospective bidder must file a written notice of his intention to bid not less than six (6) calendar days prior to the date designated for the opening of bids as required by Section 103-25, HRS.

All bidders must be contractors licensed at the time of bidding, in accordance with Chapter 444, HRS, as amended, to perform the work under the contract.

The written notice of intention to bid applies to all construction of any buildings, water systems or portion thereof or other public works and in conjunction therewith, the furnishing and installing of furniture, equipment, appliances, materials and any combination of these items. The written notice of intention to bid must be filed in the office of the Manager, no later than 4:30 p.m. of the 6th calendar day preceding the day designated for the bid opening, unless otherwise instructed in the Invitation to Bidders. The words "intention to bid" must be clearly written or typed on the face of the envelope containing the written notice of intention to bid. The notice may be hand carried or mailed to the office of the Manager. If the 6th calendar day prior to the designated bid opening day is a Saturday, Sunday or legal State holiday, then the written intention to bid must be received by the office of the Manager no later than 4:30 p.m. on the last working day immediately prior to said Saturday, Sunday, or legal State holiday.

It is the responsibility of the prospective bidder to ensure the timely arrival of the written intention to bid. The Department of Water Supply assumes no responsibility for the non-delivery caused by the prospective bidder or the mode of conveyance chosen by the prospective bidder.

If two (2) or more prospective bidders desire to bid jointly as a joint venture on a single project, they must file an affidavit of joint venture with the Manager with their notice of intention to bid. Such affidavit of joint venture shall be valid only for the specific project for which it is filed. Joint ventures are required to be licensed in accordance with Chapter 444, HRS, and the rules and regulations of the Contractor's Licensing Board. The Manager may, in accordance with Section 103-25, HRS, require the prospective bidder to file a "Standard Questionnaire and Financial Statement for Bidders," on the form provided by the Department properly executed and notarized, at least seventy-two (72) hours prior to the time advertised for the opening of bids. If the information in the questionnaire proves satisfactory, the bidder's proposal shall be received. The questionnaire shall be returned to the bidder after it has served its purpose.

If upon review of the questionnaire, or otherwise, the bidder appears not fully qualified and able to perform the intended work, the Manager shall, after affording the bidder an opportunity to be heard and if still of the

opinion that the bidder is not fully qualified to perform the work, refuse to receive or to consider any bid offered by the prospective bidder.

Failure to complete the prequalification questionnaire shall be sufficient cause for disqualification by the Manager.

2.2 DISQUALIFICATION OF BIDDERS

Any one or more of the following causes shall be considered as sufficient for the disqualification of the bidder.

- (a) Non-compliance with Subsection 2.1 - COMPETENCY OF BIDDERS.
- (b) Evidence of collusion among bidders.
- (c) Lack of responsibility and cooperation as shown by past work.
- (d) For being in arrears on existing contracts with the County of Hawaii or the Department of Water Supply, or having defaulted on a previous contact.
- (e) Lack of proper equipment and/or sufficient experience to perform the work contemplated as revealed by the Questionnaire.
- (f) No contractor's license at the time of bidding or a contractor's license which does not cover type of work contemplated.
- (g) More than one proposal for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name.
- (h) For delivery of bids after the deadline for receiving bids.
- (i) Failure to pay, or satisfactorily settle, all bills overdue for labor and materials and materials of former contracts in force at the time of issuance of proposal forms.
- (j) For being in arrears in the payment of any County or State tax or assessment.

2.3 INTERPRETATION OF QUANTITIES IN BID SCHEDULE

When quantities for individual items of work are listed in the proposal form for which respective unit prices are asked, said quantities are to be considered as approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work and the bidder understands and agrees that he is satisfied with and shall at no time dispute said estimated quantities as a means of comparing the bids.

After determining the low bidder by comparison of bids submitted in accordance with the proposal form and Subsection 3.1 - CONSIDERATION OF PROPOSALS - in these specifications, the right is also especially reserved to increase or decrease the scope of the improvement, subject to the provisions of Subsection 4.2 - CHANGES.

On UNIT PRICE bids, payment shall be made only for the actual number of approved or eligible units incorporated into the finished project at the UNIT PRICE bid.

It is understood and agreed that the contractor shall make no claim for anticipated profit or loss of profit due to the Department's right to eliminate entirely or to increase or decrease any or all of the quantities shown in the proposal form.

2.4 EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF WORK

The bidder shall examine carefully the site of work contemplated and the proposal, plans, specifications and contract form therefor. It shall be assumed that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality and quantities of work to be performed, materials to be furnished, and as to the requirements of the specifications, plans and contract.

No extra compensation shall be given by reason of the Contractor's misunderstanding or lack of knowledge of the requirements of the work to be accomplished or the conditions to be encountered in performing the project or by reason of the occurrence or discovery of unforeseen developments or conditions.

Where an investigation of subsurface conditions has been made by the Department or its authorized representative in respect to foundation or other design, the bidders may inspect the records of the Department as to such investigation, including examination of samples, if any, at the office of the Manager. It is understood, however, that any such information furnished is for the bidders convenience only and no assurance is given that conditions found at the time of the subsurface investigation, such as presence or absence of water, shall be conditions that prevail at the time of construction.

When the contract plan includes a log of test borings showing a record of the data obtained by the Department's or its authorized representative's investigation of subsurface conditions, said log represents only the opinion of the Department as to the character of material encountered and there is no warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work or any part of it, or that unforeseen developments may not occur.

Information with respect to the site of the work given on the drawings or specifications has been obtained by the Department and is believed to be reasonably correct, however, it is the responsibility of the bidder to verify all such information. Any utilities that the Contractor encoun-

ters during the progress of the work, such as telephone ducts, electric ducts, water lines, sewer lines, electric lines and drainage pipes, whether shown or not on the contract plans, shall not be disturbed or damaged unless otherwise instructed in the plans and specifications. The Contractor shall investigate, by actual digging in the field, the location of the utility lines and their branch and service lines.

In the event the utilities are damaged or disturbed by the Contractor, the Contractor shall be held liable for the damaged or disturbed utilities which were:

- (a) Shown or noted on the plan or called for in the specification.
- (b) Located and exposed on the job as it progressed.
- (c) Pointed out to the Contractor in the field.

The Contractor shall repair the damaged or disturbed utilities to the original condition at no cost to the Department. Any claims for personal injury or property damage arising out of or caused by the damaged or disturbed utilities or due to the disruption of service caused by the utilities being damaged shall be the sole responsibility of the Contractor. The Contractor shall indemnify and save harmless the Department from all suits, actions or claims of any character brought on account of such damage. Utilities which must be relocated due to construction and not indicated in the plans and specifications shall be considered to be additional work as covered by Subsection 4.2(c) - Additional Work. The Contractor shall not, in any case if he encounters underground utilities, proceed with any work until he has notified the Manager.

No information derived from such inspection of records of subsurface investigations made by the Department or from the Manager or from his authorized representative or from maps, plans, specifications or drawings shall in any way relieve the Contractor from any risk or from properly fulfilling all the terms of the contract. The log test boring if included in the plans are only for the convenience of the bidder and do not constitute a part of the contract.

2.5 ADDENDA, BULLETINS AND INTERPRETATIONS

No interpretation of the meaning of the plans, specifications or other pre-bid documents shall be made to any bidder orally before the opening of bids. Discrepancies, omissions, or doubts as to the meaning of drawings and specifications should be communicated in writing to the Manager for interpretation and must be received by the office of the Manager no later than ten (10) calendar days prior to the date fixed for bid opening.

Every request for such interpretation should be in writing addressed to the Manager at his (her) respective business address. Any interpretation, if made, and any supplemental instructions shall be in the form of

written addenda to the bid documents which, shall be mailed to all prospective bidders (at the respective addresses furnished for such purposes) prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda and bulletins so issued shall become part of the contract documents.

2.6 CONTENTS OF PROPOSAL FORMS

Prospective bidders shall be furnished with proposal forms giving the location, description, and the contract time of the work contemplated for which a lump sum bid price is asked or containing a schedule of items, together with estimated quantities of work to be performed and materials to be furnished, for which unit bid prices and/or lump sum bid prices are asked.

Proposal forms shall also include a listing of joint contractors and/or subcontractors asking the name of each person or firm to be engaged on the project as a joint contractor or subcontractor.

All papers bound with or attached to the proposal form shall be considered a part thereof and shall not be detached or altered except by addenda when the proposal is submitted.

The plans, specifications and other documents designated in the proposal form, shall also be considered a part thereof whether attached or not.

2.7 PREPARATION OF PROPOSAL

The bidder's proposal must be submitted on the proposal form furnished by the Department. The proposal must be filled in, in accordance with the instructions thereon. The bidder must state the prices (written in ink or typed,) both in words and numerals for which they intend to do the total of work contemplated and must state the prices in numerals for which they intend to do the total work contemplated and must state the prices in numerals for which they intend to do each item of work contemplated. The bidder shall sign the proposal in ink in the spaces provided. If the proposal is made by an individual, his name and post office address must be shown. If made by a firm or partnership, the name and post office address of each member of the firm or partnership must be shown. If made by a corporation, the proposal must show the name, titles and business address of the president, secretary, and treasurer and also evidence showing the authority of the bidder to enter on behalf of said corporation into contract with the Commission in the form of a corporate resolution. If made by a joint-venture, the name and post office address of each member of the individual firm, partnership, or corporation comprising the joint-venture must be shown with other pertinent information required of firms, partnerships or corporations as the case may be. Bids signed in behalf of a corporation must be impressed with corporate seal if the corporation has a seal. If the corporation has no seal, this fact should be noted.

2.8 PROPOSAL GUARANTY

No proposal shall be considered unless accompanied by one of the following forms of bidder's security:

- (a) Cash.
- (b) Certificate of Deposit made by a bank that is insured by the Federal Deposit Insurance Corporation and made payable to the Manager, Department of Water Supply.
- (c) Certified check drawn on and certified by a bank that is insured by the Federal Deposit Insurance Corporation and made payable to the Manager, Department of Water Supply.
- (d) Cashier's check made by a bank that is insured by the Federal Deposit Insurance Corporation and made payable to the Manager, Department of Water Supply.
- (e) Bidder's bond executed by bidder and an approved surety insurer, authorized to do business in Hawaii and made payable at sight to the Manager, Department of Water Supply, in the manner, form and amount required by Sections 103-28, 103-30 and 103-31, HRS.

If proposal guaranty exceeds \$100,000, it must be in the form of cash or surety bond as prescribed by Section 103-31, HRS. Certificates of Deposit, cashier's checks and certified checks must not be used for amounts exceeding \$100,000.

If the bidder is a corporation, evidence in the form of a corporate resolution, authorizing the corporate representative to execute the bond must be submitted with the proposal. If the bidder is a partnership, all partners must sign the bond or evidence in the form of a partnership agreement must be submitted showing the authority of the partner.

If the bidder is a joint-venture, all parties to the joint-venture must sign the bond or evidence in the form of a joint-venture agreement must be submitted showing the authority of the bidder to sign the bond on behalf of the joint-venture.

The proposal guaranty shall be in a sum not less than five percent (5%) of the amount bid, payable at sight to the Chairman, provided, however, that if the amount bid exceeds FIFTY THOUSAND DOLLARS (\$50,000), the cash, certified check, cashier's check, certificate of deposit or surety bond shall be in a sum not less than TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) plus two percent (2%) of the amount in excess of FIFTY THOUSAND DOLLARS (\$50,000).

In the case where the award shall be made on a group or item basis, the amount of proposal guaranty shall be based on the total bid for all groups or items submitted.

The successful bidder's proposal guaranty shall be retained until he has entered into a satisfactory contract and has furnished the required contract Performance Bond. Failure to furnish a satisfactory Contract Performance Bond within ten (10) days after the award or within such further time as the Manager may allow, may be determined to be abandonment of the contract by the bidder and forfeiture of the proposal guaranty as Liquidated Damages to the Department. The Commission further reserves the right to hold the proposal guaranty of the three (3) lowest bidders, until the successful bidder has entered into a contract and has furnished the required Performance Bond.

2.9 DELIVERY OF PROPOSALS

The entire proposal shall be placed together with the proposal guaranty, in a sealed envelope, so marked as to indicate the identity of the project, the project number, the date of the bid opening and the name and address of the bidder and then delivered to the office of the Manager or as otherwise indicated in the Invitation to Bidders. Proposals shall be received up to the time fixed in the public notice for the opening of bids.

2.10 WITHDRAWAL OF PROPOSALS

Any bid may be withdrawn at any time prior to, but not after, the time fixed in the public notice for the opening of bids, provided that a request in writing, executed by the bidder or his duly authorized representative, for the withdrawal of such bid is filed with the Manager. The withdrawal of a bid shall not prejudice the right of a bidder to file a new bid. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time, nor may any bid be withdrawn after the time fixed in the public notice for the opening of bids, unless contract award is delayed for a period of over sixty (60) days.

2.11 PUBLIC OPENING OF PROPOSALS

Proposals shall be opened and read publicly at the time and place indicated in the Invitation to Bidders. Bidders or their authorized agents are invited to be present.

2.12 DEPOSIT AND REFUND FOR PLANS AND SPECIFICATIONS

All plans and specifications may be obtained from the office of the Manager upon a deposit of the amount specified in the Invitation to Bidders. The plans and specifications are the property of the Department on loan to the bidder until bids are due. Bidders, should they decide not to submit bid, are requested to return the plans and specifications. The deposit shall not be construed to be the purchase price of any part of these documents. The deposit shall be refunded upon the return of the complete plans and specifications, provided that they are returned in

usable condition and within thirty (30) consecutive calendar days after the date designated for the opening of bids. No refund shall be made after the expiration of this period except as follows:

- (a) The Contractor submitting the apparent low bid for the project may retain his plans and specifications unless otherwise notified.
- (b) All persons or firms shown on the listing of joint contractors and subcontractors contained in the apparent low bidder's proposal may also retain their plans and specifications unless otherwise notified.

SECTION 3 - AWARD AND EXECUTION OF CONTRACT

3.1 CONSIDERATION OF PROPOSALS

All extensions must be made by considering the quantities and unit prices as factors and all extensions and the summations must be arithmetically correct.

It is understood and agreed that if the product of the Unit Price Bid and the number of units does not equal the total amount stated by the bidder in the Proposal for any item, it shall be assumed that whichever figure (Unit Price or Total Amount) that results in the lower total bid for the proposal represents the bidder's intention and for the purpose of determining the lowest bidder, the proposal shall be corrected accordingly. It is also understood and agreed that should the total amount stated be adopted or if the bidder fails to state a Unit Price, the Unit Price shall be the amount arrived at by dividing the total amount by the number of units.

After the proposals are opened, read, and checked, the totals shall be compared and the results of such comparison shall immediately be made available to the public. In the comparison of bids, words written in the proposals shall govern over figures. Until the award of the contract, however, the Department reserves the right to reject any and all proposals and to waive any defects as may be deemed in the best interest of the Department.

3.2 REJECTION OF PROPOSALS

Proposals shall be considered irregular and may be rejected for the following reasons:

- (a) If the proposal is unsigned.
- (b) The Proposal guaranty is not in accordance with Subsection 2.8 - PROPOSAL GUARANTY.
- (c) If the proposal is on a form other than that furnished by the Department; or if the form is altered or any part thereof detached.
- (d) If the proposal shows any non-compliance with applicable law, alteration of form, additions not called for conditional bids, incomplete bids, uninitialed erasures, other defects, or if the prices are obviously unbalanced.
- (e) If sufficient funds are not available to prosecute the work.
- (f) If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award, or any provision limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting.

- (g) When a proposal is signed by an officer or officers of a corporation and a currently certified corporation resolution authorizing such signer(s) to submit such proposal is not submitted with the proposal or when the proposal is signed by an agent other than the officer or officers of a corporation or a member of a partnership and a Power of Attorney is not submitted with the proposal.
- (h) Where there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the proposal may be rejected. All work which is not listed as being performed by joint contractors and/or subcontractors must be performed by the bidder with his own employees.

Additions to the list of joint contractors or subcontractors shall not be allowed. Whenever there is a doubt as to the completeness of the list, the bidder shall be required to submit within five (5) working days, a written confirmation that the work in question shall be performed with his own work force. Whenever there is more than one joint contractor and/or subcontractor listed for the same item of work, the bidder shall be required to either confirm in writing within five (5) working days that all joint contractors or subcontractors listed shall actually be engaged on the project or obtain within five (5) working days written releases from those joint contractors and/or subcontractors who shall not be engaged on the project.

3.3 AWARD OF CONTRACT

The award of contract, if awarded, shall be made within sixty (60) consecutive calendar days after the opening of the bids to the lowest responsible bidder whose proposal complies with all the requirements prescribed, but in no case shall an award be made until all necessary investigations are made, except as provided for in Sections 103-43 and 103-53.5, HRS. If the lowest bid or any other bid is rejected, or if the bidder to whom the contract was awarded fails to enter into the contract and furnish satisfactory security as required under Subsection 3.5 - REQUIREMENT OF CONTRACT BOND- the Chairman may, at his discretion, award the contract to the lowest remaining responsible bidder or may re-advertise for bids pursuant to Section 103-26, HRS; provided that at his discretion the Chairman, after determining the lowest responsible bidder, may negotiate with such bidder to reduce the scope of work and to award the contract at a price which reflects the reduction in the scope of work (Section 103.32, HRS), or may, in the case of only one bidder and when the bid exceeds available funds for the contract, negotiate with such bidder to reduce the price and award the contract at the reduced price.

No contract shall be awarded to any person or firm suspended under the provisions of Chapter 104 and Chapter 444, HRS. The successful bidder shall be notified by letter mailed to the address shown on the proposal, that his bid has been accepted and that he has been awarded the contract.

3.4 RETURN OF PROPOSAL GUARANTIES

Within ten (10) consecutive calendar days after the award of the contract, the Department shall return the proposal guaranties accompanying the proposals not to be considered in making the award. All other proposal guaranties shall be held until the contract has been fully executed and a satisfactory contract bond posted, after which time they shall be returned to the respective bidders.

3.5 REQUIREMENT OF CONTRACT BOND

The bidder to whom the contract is awarded shall file a guaranty of the faithful performance of said contract, a good and sufficient written bond. This bond and any justification thereto shall conform to the provisions of Sections 78-20, 103-34 to 103-38 inclusive and 507-17, HRS. The bond shall be in an amount equal to one-hundred percent (100%) of the contract amount including amounts estimated to be required for extra work, or in the case of price term, opened-end, or requirements contracts under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded, the bond amount shall be as designated in the bid document. The bond shall also by its terms inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in the work so as to give them a right of action as contemplated by Section 507-17, HRS.

Pursuant to Sections 103-34 to 103-38 inclusive, HRS, if the surety on any bond is other than a surety company authorized to do business under the laws of the State, the Manager shall also require such surety or sureties to severally deposit with him certified checks or certificates of deposit, bonds, stocks or other negotiable securities, or execute and deliver to him a deed or deed of trust, all of such character as shall be satisfactory to the Manager, and each surety shall furnish such security to the full cash value of one-hundred percent (100%) of the amount for which he shall have justified. Such security or securities shall be held by the Manager upon the terms and conditions and with the powers and trusts specified in said Sections 103-34 to 103-38 inclusive, and 507-17, HRS.

3.6 EXECUTION OF THE CONTRACT

The contract shall be signed by the successful bidder and returned, together with a satisfactory contract bond and certificate of insurance, within ten (10) days, not including Saturdays, Sundays and legal holidays, after the bidder has received his contract for execution. No proposal or contract shall be considered binding upon the Department until the contract has been fully executed and is in compliance with Section 103-39, HRS.

3.7 FAILURE TO EXECUTE THE CONTRACT

If the bidder to whom a contract is awarded fails or neglects to enter into the contract or to furnish satisfactory security or to submit an adequate certificate of insurance within ten (10) consecutive calendar days after such award or within such further time as the Manager may allow, the bidder's proposal guarantee or bid bond shall be forfeited and the surety (made a party thereto) shall pay to the Manager the full amount of the bond; or the Manager shall retain the amount of the bidder's deposit or legal tender or certificate of deposit or certified check and utilize the same as a realization to the Department. The Chairman may thereupon award the contract to the next lowest responsible bidder or may call for bids by whichever method he deems to be in the best interest of the Department.

3.8 SCHEDULE OF PRICES

Unless the proposal requires unit price bids on all items in this project, the successful bidder shall be required, after the award of contract to submit a schedule of prices for the various items of construction which make up portions of the project included in the contract. The sum of the prices submitted for the various items must equal the lump sum bid in the bidder's proposal. This schedule shall be subject to the approval of the Manager and he reserves the right to reject same and require the bidder to submit another or several other schedules if in his opinion the prices are unbalanced. This schedule of prices shall be used for the purpose of determining the value of monthly payments due the Contractor for work installed complete in place. The Manager shall estimate at the close of each month the percentage of work completed under each of the various construction items during such month, and the Contractor shall be paid said percentage of the price established for each item less the applicable retention. See also Subsection 9.6 - PROGRESS AND PARTIAL PAYMENTS.

3.9 NOTICE TO PROCEED

After the contract is fully executed and signed by the Chairman, the Contractor shall be sent a formal "Notice to Proceed" by the Manager advising the Contractor of the date on which he may proceed with the work. The contractor shall be allowed ten (10) working days from said date to begin his work. In the event that the Contractor refuses or neglects to start the work without just cause as determined by the Manager, the Manager shall use the enforcement powers vested in him by Section 507-17, HRS.

In the event that the Contractor desires to commence his operations prior to receipt of a formal notice to proceed, he may do so by asking the permission of the Manager in writing. As such, all work performed, shall be conducted in accordance with Subsection 8.1 - PROSECUTION OF THE WORK.

3.10 INFORMAL BID

Should the Manager find that a project is of such nature that it does not require formal advertising pursuant to Sections 103-22 to 103-23, HRS, he may then call for informal bids in accordance with the plans and specifications issued for the preparation of such bids.

SECTION 4 - SCOPE OF WORK

4.1 INTENT OF PLANS AND SPECIFICATIONS

It is intended that the plans and specifications shall include everything requisite and necessary for the proper and entire completion of the work, notwithstanding that every item necessarily involved by the work is not particularly mentioned. All work when completed is to be delivered to the Department in a perfect and undamaged state. The Contractor shall comply with the obvious intent and meaning of the specifications which shall be construed to include all labor and materials, measures and modes of work necessary to complete the work specified in a manner satisfactory to the Manager.

4.2 CHANGES

The Manager reserves the right to make such alterations, deviations, additions to, or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work or to omit any item or portion of the work as may be deemed necessary or advisable and to require such extra work as may be required for the proper completion or construction of the whole work contemplated.

Any such changes shall be set forth in a change order which shall specify in addition to the changes in the work, adjustment of contract time, if any, and the basis of compensation for such work. All detailed cost breakdowns shall be submitted to the Manager within ten (10) consecutive working days from the date of such written requests. A change order shall not become effective until approved by the Manager and Chairman.

Upon receipt of an executed change order, the contractor shall proceed with the ordered work. If ordered in writing by the Manager, the Contractor shall proceed with the work so ordered prior to actual receipt of an executed change order therefor.

(a) Increased or Decreased Quantities

1. Unit Price Work - The Manager reserves and shall have the right to make such changes, from time to time, in the plans the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner, provided such alterations do not change the total cost of the project, based on the originally estimated quantities and the unit price bid, by more than twenty-five percent (25%), and provided further that such alternations do not change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than twenty-five percent (25%). (A major item shall be construed to be any item, the total cost of which is

equal to or greater than ten percent (10%) of the total contract price, computed on the basis of the proposal quantity and the contract unit price.) Should it become necessary in the best interest of the Department to make changes in excess of that herein specified, the same shall be covered by an amendment.

The Contractor shall not start work on any alteration requiring an amendment until the agreement setting forth the adjusted prices is executed by the Chairman and the Contractor.

Should any of the changes not requiring an amendment be made as provided herein, the Contractor shall perform the work as altered, increased or decreased at the contract unit price or prices.

In case a satisfactory adjustment in price cannot be reached for any item requiring an amendment, the Chairman reserves the right to terminate the contract as it applies to the items in question or perform this work by force account as outlined in Subsection 9.4(b) - Force Account Work - or make such arrangements as may be deemed necessary to complete the work.

2. Lump Sum Work - Increases or decreases in projects for which a Lump sum price is asked shall not be made on the basis of a certain percentage over or under the original lump sum price bid for the project. The cost of increased or decreased work shall be determined in accordance with Subsection 4.2(c) - Additional Work.

(b) Omitted Items - Should any contract item of the work be omitted by the Manager in its entirety, in the absence of a contract change order covering such omission, payment shall be made to the Contractor for actual and direct costs, excluding overhead and profit incurred in connection with such omitted contract item if incurred prior to the date of notification in writing by the Manager of such omission, except as hereinafter provided for costs of handling materials.

If acceptable material is ordered by the Contractor for the omitted item prior to the date of notification of such omission by the Manager and if orders for such material cannot be canceled, it shall be paid for at the actual cost to the Contractor, excluding overhead and profit. In such case, the material paid for shall become the property of the Department and the cost of any further handling shall be paid for as extra work as provided in Subsection 4.2(d) - Decreased or Deleted Work - and payment shall be by change order as provided for in Subsection 4.2(c) - Additional Work. If the material is returnable to the vendor and if the Manager so directs, the material shall be returned and the Contractor shall be paid for

charges made by the vendor for returning the material, excluding any markup for overhead and profit to the Contractor. The cost of handling returned material shall be paid for as extra work as provided in Subsection 4.2(c) - Additional Work.

- (c) Additional Work - New and unforeseen work shall be classed as additional work when determined by the Manager that such work is not covered by any of the various items for which there is a bid price or by combinations of such items. In the event portions of such work are determined by the Manager to be covered by some of the various items for which there is a bid price or combinations of such items, the remaining portion of such work shall be classed as additional work.

Additional work also includes work specifically designated as additional or extra work in the plans or specifications.

The Contractor shall do such additional work and furnish material and equipment therefor upon receipt of an approved change order or other approved written order of the Manager; and in the absence of such approved change order or other approved written order of the Manager, he shall not be entitled to payment for such additional work. Where such additional work is ordered by a written order other than a change order, the Manager shall as soon as practicable issue a change order therefor.

Compensation for this change order shall be determined as follows:

1. The Contractor shall carefully examine the additional work requested and shall submit detailed cost breakdowns for material, equipment and labor for the Manager's approval.

An applicable percentage for insurance and fringe benefits shall be allowed for labor. To the total cost estimate, a 15% overhead and profit shall be allowed to the firms doing the actual work. In addition, a ten percent (10%) overhead and profit shall be allowed the General Contractor only on the cost estimate of a subcontractor. The applicable State tax shall be allowed.

2. Should the Manager find that the Contractor's cost estimate is unreasonably high or incorrect, he shall so notify the Contractor to re-examine the additional work and resubmit revised detailed cost breakdowns.
3. Should the Manager find that the Contractor's revised detailed cost breakdowns are still unreasonably high or incorrect, he shall issue a change order based on his cost estimate. Should the Contractor disagree with any terms or conditions set forth in a change order which he has not executed, he shall submit a

written protest to the Manager within five (5) days after the receipt of such change order. The protest shall state the points of disagreement, contract specifications references and, if possible, the quantities and costs involved. If a written protest is not submitted within said five (5) day period, the change order shall be deemed unprotested, and payment shall be made as set forth in the change order and such payment shall constitute full compensation for all work included therein or required thereby.

Such unprotested change orders shall be considered as executed change orders.

4. Should the protest concerning the change order be unresolved, the Commission reserves the right to perform this work by force account as outlined in Section 9.4(b) - Force Account Work - or make such arrangements as may be deemed necessary to complete the work.
 5. When the protest concerning a change order relates to the adjustment of contract time for the completion of the work, the time to be allowed therefor shall be determined as provided in Subsection 8.8 - CONTRACT TIME.
- (d) Decreased or Deleted Work - Should it become necessary in the best interest of the Department to decrease or delete a portion of the work called for in the contract, a change order shall be issued and a rebate for this change order shall be as outlined in Subsection 4.2(c) - Additional Work.
- (e) Force Account Work - If a change order is protested, work performed shall be paid in accordance with Subsection 9.4(b) - Force Account Work - and all force account work shall be under the supervision of the Department unless otherwise directed in writing. Before any force account work is carried out, the Contractor shall submit labor insurance rates and equipment rental rates for the Manager's approval.

4.3 MAINTENANCE OF TRAFFIC

Unless otherwise provided, the Contractor shall keep the roadway open to all traffic during the progress of the work.

Pursuant to Chapter 286, HRS, all construction, maintenance, Engineering survey and other work, being conducted on or near public streets and highways, that may temporarily obstruct any portion of the roadway, constitute a major hazard to motorists and pedestrians as well as to workmen at the work site, shall be in accordance with all of the rules adopted by the Highway Safety Coordinator, State of Hawaii, and the Manual on Uniform Traffic Control Devices for Streets and Highways, 1978,

published by the U.S. Department of Transportation, Federal Highway Administration, and any amendments or revisions thereof as may be made from time to time.

Provisions of the rules adopted by the Hawaii Safety Coordinator, State of Hawaii, pertaining to the color and design of traffic signs, barricades and other traffic control devices and which refer to the specifications of the 1961 edition of "The Manual" shall be amended to read that such traffic control devices shall conform to the colors and designs specified in the 1978 edition of the "The Manual."

Where so provided on the plans, the Contractor may bypass traffic over an approved detour route. The Contractor shall keep the portion of the project being used by public traffic, whether it be through or local traffic, in such condition that traffic shall be adequately accommodated. He shall also provide and maintain in a safe condition temporary approaches or crossings and intersections with trails, roads, streets, businesses, parking lots, residences, garages and farms.

No material or equipment shall be stored where it shall interfere with the free and safe passage of public traffic. At the end of each day's work or when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions to permit free and safe passage of public traffic.

The Contractor shall bear all expense of maintaining traffic over the section of road undergoing construction and of constructing and maintaining such approaches, crossings, intersections and other features as may be necessary, including the furnishing of flagmen and their equipment, without direct compensation, unless otherwise specified in the proposal.

The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the work and safety of the public pursuant to the provisions of Subsection 7.5 - BARRICADES, DANGER, WARNING AND DETOUR SIGNS.

Unless otherwise provided, all requirements imposed by this subsection and other work for the convenience and safety of the public shall be performed by the Contractor as a part of the work contracted to be performed and no additional compensation shall be allowed therefor.

4.4 SAFETY REGULATIONS

All machinery, equipment, etc., and other hazards shall be properly guarded in accordance with safety rules and regulations of the State and provisions of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America, insofar as they are applicable. The rules and regulations of the Occupational Safety and

Health Standards of the State of Hawaii, promulgated under Chapter 394, HRS, is made a part of the Contract. The Contractor shall carefully read and strictly comply with its requirements.

4.5 FINAL CLEANING UP

Before final inspection of the work, the Contractor shall clean all ground occupied by the Contractor in connection with the work of all rubbish, excess materials, temporary structures and equipment, and all parts of the work left in a neat and presentable condition to the satisfaction of the Manager. However, the Contractor shall not remove any warning and directional signs prior to the formal acceptance by the Manager. Full compensation for the final cleaning up shall be considered as included in the prices paid for the various items of work or lump sum bid, as the case may be, and no separate payment shall be made therefor.

SECTION 5 - CONTROL OF WORK

5.1 AUTHORITY OF THE MANAGER

The Manager shall decide on all questions which may arise as to the quality or acceptability of the materials furnished and work performed, as to the manner of performance and rate of progress of the work, as to the interpretation of the plans and specifications, as to the acceptable fulfillment of the contract on the part of the Contractor, as to compensation and as to mutual rights between Contractors. His decisions shall be final and he shall have authority to enforce such decisions and orders as the Contractor fails to carry out. He shall have the following powers in the way of enforcement:

- (a) The right to suspend the work
- (b) The right to withhold payment due the Contractor

5.2 AUTHORITY OF THE INSPECTOR

Inspectors, employed by the Department shall be authorized to inspect all work done and all materials furnished. Such inspections may extend to all or any part of the work, and to the preparation, fabrication or manufacture of the materials to be used. The inspector is authorized to call the attention of the Contractor to any failure of the work or materials of the contract.

He shall have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Manager. The inspector shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the work by the contractor. Any advice which the inspector may give the Contractor shall in no way be construed as binding on the Manager in any way, or releasing the Contractor from fulfilling all of the terms of the contract. The inspector also shall not be authorized to revoke, alter or waive any requirements of the contract.

The inspector shall have the authority to suspend operations by issuing a written order giving the reason(s) for shutting down the work. After placing the order in the hands of the person in charge, the inspector shall immediately leave the job. Work done during the absence of the inspector shall not be accepted nor paid for.

5.3 PLANS AND SHOP DRAWINGS

- (a) Contract Plans - Contract plans furnished by the Department shall consist of general drawings and shall show such details as are necessary to give a comprehensive idea of the construction contemplated. Deviations from the plans and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the Manager.

- (b) Shop Drawings - The Contractor shall prepare, thoroughly check, and submit to the Manager such shop drawings as may be required to show in detail all parts of the permanent work. Shop drawings for structural steel and mill-work shall consist of fabrication details, erection drawings and other working plans necessary to show details, dimensions, sizes of members, anchor bolt plans and other information necessary for the complete fabrication and erection. The Contractor shall also furnish, where necessary or required or as requested by the Manager, shop drawings showing information on the details and dimensions for all miscellaneous installations of material or equipment furnished and installed by the Contractor.

The Contractor shall submit six (6) complete sets of all shop drawings for approval. Full compensation for furnishing the six (6) sets of shop drawings shall be considered as included in the prices paid for the various contract items of work, and no additional allowance shall be made therefor.

It is the responsibility of the Contractor to submit shop drawings for approval as required at the earliest possible date after the date of Notice to Proceed in order to meet their construction schedule. Delays caused by the failure of the Contractor to submit shop drawings shall not be considered as justifiable reasons for contract time extension.

It shall be expressly understood that approval by the Manager of the Contractor's shop drawings does not relieve the Contractor of any responsibility for accuracy of dimensions and details and for mutual agreement of dimensions and details and for agreement and conformity of shop drawings and the contract plans. It is further understood that the approval by the Manager of the Contractor's shop drawings, whether general or detailed, is a general approval relating only to their sufficiency and compliance with the intention of the contract and shall not excuse or constitute a waiver of errors, discrepancies or omissions.

- (c) Descriptive Sheets - The Contractor shall submit to the Manager six (6) complete sets of descriptive sheets such as brochures, catalogs, illustrations, etc., which shall completely describe the material, product, equipment, furniture or appliances to be used in the project as shown in the plans and specifications. The Contractor shall submit descriptive sheets for approval as required at the earliest possible date after the date of notice to proceed in order to meet their construction schedule. Delays caused by the failure of the Contractor to submit descriptive sheets as required shall not be considered as justifiable reasons for contract time extension.

- (d) Material Samples and Color Samples - The Contractor shall submit to the Manager samples of the materials and color selection samples. It is the responsibility of the Contractor to submit material and color samples for approval as required at the earliest possible date after the date of notice to proceed in order to meet their construction schedule. Delays caused by the failure of the Contractor to submit material and color samples shall not be considered as justifiable reasons for contract time extension.

5.4 COORDINATION OF CONTRACT DOCUMENTS

These General Requirements and Covenants, and plans, proposals, special provisions, technical specifications, change orders, addenda and amendments are essential parts of the contract, and a requirement occurring in one is as binding as occurring in all. They are intended to be correlative and to describe and provide for a complete work.

Where no figures or memoranda are given, the drawings shall be followed accurately according to scale, subject to the approval of the Manager. In any case of discrepancies in the figures or drawings, the discrepancies shall be immediately referred to the Manager without whose decision said discrepancy shall not be adjusted by the Contractor except at his own risk; and in the settlement of any complications arising from such adjustment without the consent of the Manager, the Contractor shall bear all extra expense involved. In case of discrepancy, figured dimensions shall govern over scaled dimensions; technical specifications shall govern over plans; special provisions and proposal shall govern over the General Requirements and Covenants. Special provisions governs over plans and specifications, as applicable.

Where detailed drawings are shown, they shall govern insofar as methods of construction that are not described in the specifications. All drawings on a scale of 1/4" to the foot or larger shall be considered detail drawings. Schedules for interior work shall also be considered detail drawings.

Within the plan itself, if 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 Manager for a decision.

5.5 INTERPRETATION OF PLANS AND SPECIFICATIONS

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 Manager 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 questions arising with respect to the true meaning of the plans and specifications, reference shall be made to the Manager whose decision thereon shall be final.

5.6 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT

- (a) Plans and Specifications - The Contractor shall be supplied up to twelve (12) copies of the plans and specifications. The Contractor shall have available on the project site, at all times, one copy each of said plans and specifications; he shall be aware of everything necessary to facilitate the progress thereof and shall cooperate with the Manager and with other Contractors in every possible way.
- (b) Order by Manager - Any order given by the Manager, if not otherwise required by the specifications to be in writing, shall on request of the Contractor be given or confirmed by the Manager in writing.
- (c) Authorized Representative - An authorized and responsible representative of the Contractor shall be present at the site of the work at all times while work is actually in progress on the contract.
- (d) Engineering Work - The Contractor shall, subject to approval of the Manager, properly and accurately lay out the work and shall perform all engineering work and furnish all engineering materials and equipment required to establish and maintain all lines and grades called for in the plan or required in the progress of construction, unless otherwise noted in the specifications. The Contractor shall be held definitely and absolutely responsible for any errors in lines, grades or elevations and shall at once on instruction from the Manager correct and make good such errors or any errors or faults in the work resulting from errors in engineering performed under the requirements of his contract to the complete satisfaction of the Manager. Full compensation for the work shall be included in the prices paid for contract items of work. No additional allowance shall be made for the correction of incorrect engineering work. When required the contractor shall employ a licensed surveyor to lay out the work.

The Manager shall furnish the requisite bench elevations and shall indicate to the Contractor the lines and dimensions required by the Plans. He shall also check and pass upon all engineering work as described above, and his decisions as to what work is required, the methods to be employed and the satisfactory performance of the same shall be final.

- (e) Use of Facilities - The Department shall have the right at any time during construction of the facilities or structures to enter said facility or structure for the purpose of installing by its own labor or by any other Contractor any necessary work in connection with the installation of facilities or structures, it being mutually understood and agreed, however, that the Contractor and the Department shall, so far as possible, work to the mutual advantage of both, where their several works in the above-mentioned or in unforeseen

instances touch upon or interfere with each other. The Manager shall allocate the work and designate the sequence of construction in case of controversy between Contractors on separate projects under the Department's jurisdiction.

The Department shall also have the right to inspect the facilities, equipment or any part thereof, at any time. In the event that the facilities, equipment or any part thereof is so used, the Department shall be responsible for all expenses incidental to such use and any damages resulting therefrom.

If the Department enters the facility for construction and/or occupancy and the Contractor is delayed because of interference by the Department or by extra work resulting from damage which the Contractor is not responsible for, the Contractor shall be granted an extension of time in accordance with Subsection 8.8 - CONTRACT TIME. Any additional work necessary shall be paid in accordance with Subsection 9.4 - PAYMENT FOR ADDITIONAL WORK.

- (f) Field Office - If noted in the specifications, the Contractor shall furnish for use by the Inspectors an approved weatherproof building. The building shall be located conveniently near the construction site and shall be separated from any building used by the Contractor. The floor space shall be not less than 150 square feet with a minimum dimension of ten (10) feet. The ceiling shall not be less than eight (8) feet in height, and there shall be at least three single sash lighting windows with wire mesh protective screen. The building shall be furnished with a wooden locker large enough for the storing of implements and testing equipment and with one (1) bracketed wall table at least three (3) feet by six (6) feet in dimensions. The Contractor shall also furnish adequate light and power and local telephone service. No direct payment shall be made for expense in connection therewith. The Contractor shall also pay all power and local telephone bills which are incurred during construction. The cost thereof shall be included in the price bid for the various items of the contract and no additional compensation shall be made therefor.

Should a weatherproof building be required as noted in the specifications, the Contractor shall maintain an office, equipped with a telephone, connected with local telephone service during the continuance of his contract and shall have in said office at all times during working hours a representative authorized to receive drawing, notices, letters or other communications from the Manager; and such drawings, notice, letters or other communications given or received by such representatives shall be deemed to have been given to and received by the Contractor.

- (g) Project Sign - The Contractor shall furnish and place a project sign(s) where directed. Sign(s) shall be built of 3/4" exterior grade plywood, edged and painted and shall be 4' high and 8' wide.

The exact wording and arrangement shall be directed by the Manager.

The contractor shall submit a layout of the sign before proceeding with the work, and shall make all requested changes. The approved project sign(s) shall be rigidly and firmly braced and securely attached to the supports and shall be so constructed to withstand wind forces of not less than 30 pounds per square foot of area. The cost shall be included in the price bid for the various items of the project and no additional compensation shall be made therefor.

5.7 COMMENCEMENT REQUIREMENTS

Prior to beginning operations, the Contractor shall submit the following to the Manager for approval:

- (a) Superintendent or authorized representatives on the jobsite (See Subsection 5.6 - COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT).
- (b) Working hours on the job (See Subsection 8.2 - WORKING HOURS).
- (c) Breakdown cost for monthly estimates (See Subsection 3.8 - SCHEDULE OF PRICES).
- (d) Proof of insurance coverage for the project (See Subsection 7.12 - INSURANCE).
- (e) Progress schedule (See Subsection 8.4- PROGRESS SCHEDULE).
- (f) Permits and License (See Subsection 7.3 - PERMITS AND LICENSES).

Until such time as the above items are approved, the Contractor shall not be allowed to commence on any operations.

5.8 INSPECTION

The Manager at all times shall have access to the work during its construction and shall be furnished with every reasonable facility for ascertaining at any time that the materials and the workmanship are in accordance with the requirements and intentions of the contract. All work done and all materials furnished shall be subject to his inspection and approval.

The inspection of the work shall not relieve the Contractor of any of his obligations to fulfill his contract as prescribed; and defective work shall be made good and unsuitable materials shall be replaced, notwithstanding that such defective work and materials have been previously overlooked by the Manager and accepted or estimated for payment.

Projects requiring inspection by the various other governmental agencies shall be subject to the respective inspection at all times and their respective rules and regulations shall be complied with.

Projects financed in whole or in part with Federal funds shall be subject to inspection at all times by the Federal Agency involved and its rules and regulations shall be complied with.

5.9 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

All work which has been rejected shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation shall be allowed him for such removal or replacement. Any work done beyond the work limits shown on the plans and specifications or established by the Manager or any additional work done without written authority shall be considered as unauthorized and shall 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 Manager made under the provisions of this subsection, the Manager shall have authority to cause defective work to be remedied or removed and replaced. Unauthorized work to be removed and to deduct the costs from any monies due or to become due the Contractor.

5.10 FINAL INSPECTION

Upon notification of the Manager in writing by the Contractor that the project is complete and is ready for final inspection; the Inspector shall initially inspect the work. If its found that the work is ready for a final inspection, a formal final inspection shall be scheduled to be made by the Manager within ten (10) days after the initial inspection. If, however, the Inspector finds that the project is not ready for final inspection, a final inspection shall not be scheduled and the Contractor shall be responsible to correct the deficiencies found after which time he shall again notify the Manager in writing that the project is ready for final inspection.

If upon final inspection the Manager finds that all materials have been furnished, the work has been satisfactorily performed and the construction provided for by the contract has been completed in accordance with the contract, he shall declare the project satisfactorily completed and accept the work. If upon final inspection the Manager does not so find, the Contractor shall correct the deficiencies found after which he shall again notify the Manager in writing that the project is ready for final inspection.

If upon final inspection, the Manager declares the project satisfactorily completed and accepts the work, the date of completion shall be estab-

lished by the Manager as the date on which the Contractor notified the Manager in writing that the project was ready for the final inspection, after which no working days shall be charged against the contract time, and the Contractor shall be so notified.

Final inspection and acceptance of the work by the Manager shall not relieve the Contractor from any liability as provided in Subsection 7.10 - NO WAIVER OF LEGAL RIGHTS, or from any warranties as provided in Subsection 8.15 - GUARANTEE OF WORK.

5.11 ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the Contractor and the Department, under or in reference to the contract, shall be subject to the decision of some competent person to be agreed upon by the Manager and the Contractor who shall act as referee; and his decisions shall be final and conclusive upon both parties. Should the Department and the Contractor be unable to agree upon a referee, a board of three (3) arbitrators shall be chosen: one by the owner, one by the Contractor, and the third by the two so chosen; and the decision of any two of said arbitrators shall be final and binding upon the parties. If either party to the contract neglects or fails for a period of ten (10) days after notice from the other party to designate an arbitrator hereunder, the arbitrator designated by the other party shall have full power to decide the dispute in the same manner as though a board of three (3) arbitrators had been selected. The referee or arbitrator shall decide which party shall pay the cost of referral or arbitration, and final payment to the Contractor shall not be made until the full decision of the referee or arbitrator has been rendered.

SECTION 6 - CONTROL OF MATERIALS AND EQUIPMENT

6.1 MATERIALS AND EQUIPMENT

There shall be no Departmental-owned materials or equipment supplied to the Contractor unless otherwise specified. The Contractor shall be required to install material and equipment as called for in the plans and specifications or as qualified in subsequent addenda which change the plans and specifications.

6.2 SOURCE OF SUPPLY AND QUALITY OF MATERIALS

Only materials conforming to the requirements of the specifications and having the approval of the Manager shall be used on the work. In order to expedite the inspection and testing of materials, the Contractor shall notify the Manager of his proposed sources of materials within ten (10) days from the date of award of the contract.

At the option of the Manager, the materials may be approved by the Manager at the source of supply before delivery is started. Representative preliminary samples of the character and quantity prescribed shall be submitted by the Contractor or producer for examination and tested in accordance with the methods referred to under samples and tests.

All materials proposed to be used may be inspected and tested at any time, and if it is found that material that was once approved is unacceptable at any time, the Contractor shall furnish approved material from other sources. No material, which after approval has in any way become unfit for use, shall be used in the work.

6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT

(a) Before Bid Opening - In any section of the specifications and/or plans where one or more brand names of materials or equipment are specified to indicate a quality, style, appearance or performance, the bidder shall base his bid on one of the specified brand names unless alternate brands are qualified as equal or better by the Manager in a published 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 Manager of a written request for review and approval of the substitution. The written request must be addressed to the Manager and the envelope containing the request must be clearly marked SUBSTITUTION REQUEST on the face. The request may be hand carried or mailed to the Manager. In either case, the written request must be received by the Manager no later than ten (10) days before the date set for bid opening. For the purpose of this section, the time designated by the time stamping device in the Departemnt shall be

official. If the written request is hand carried, the bearer is responsible to ensure that the request is time stamped by the Department.

The written request shall be submitted in triplicate, together with three (3) sets of technical brochures which shall either be marked or be accompanied by three (3) copies of a statement of variances.

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 substitute has no other variant features. The brochures must include sufficient evidence to enable the Manager 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 Department.

The written request shall be submitted in the following format:

<u>SECTION</u>	<u>ITEM</u>	<u>SPECIFIED BRAND</u>	<u>SUBSTITUTE OR ALTERNATE BRAND</u>
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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 with the understanding, however, that further evidence may be submitted to qualify the same model ten (10) days prior to the bid opening date and provided further, that the initial request is made prior to the deadline set above.

This privilege to submit further evidence does not apply to requests which are rejected due to non-compliance with specification requirements. Once a substitution for an item is rejected due to non-compliance with the specifications and not due to insufficient evidence, the date of the initial request for substitution cannot be applied to a subsequent request on the same item.

Substitution requests not complying with the above requirements shall be denied. Substitution requests sent to other agencies and received by the Manager after the deadline above shall 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.

This addendum shall be mailed to prospective bidders prior to the dates fixed for the opening of bids.

- (b) After Bid Opening - Substitution of material or equipment may be allowed after the bid opening date only:

1. If 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. If all specified or prequalified items are found to be unusable or unavailable due to change or other circumstances; or
3. If the Contractor is willing to provide a more recently developed or manufactured model of material or equipment of the same name manufacturer which the Manager 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 shall be rebated to the Department and any additional cost for the substituted items shall be paid for by the Contractor.

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

6.4 TEST SAMPLES

The Manager 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 Manager 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. No additional compensation shall be allowed for furnishing test samples.

Tests of materials shall be made by the Manager in accordance with the latest methods given in the latest American Society for Testing Materials as amended prior to date of the contract unless otherwise provided. In cases where definite identification of a particular test method is necessary or specifications and serial numbers are stipulated, the test shall be construed to mean the method given in the above-mentioned publication for sampling and testing the particular material or product involved. When the abbreviated reference "ASTM" is used, it shall be considered to refer to the appropriate section of the above-mentioned publication. Where "AWWA" specifications and number are stipulated, the reference shall be construed to mean the specifications of the latest American Water Works Association as amended prior to date of the contract.

6.5 DEFECTIVE MATERIALS

All materials not conforming to the requirements of these specifications shall be considered as defective, and all such materials, whether in place or not, shall be rejected and shall be removed immediately from the work site, unless otherwise permitted by the Manager. No rejected materials, the defects of which have been subsequently corrected, shall be used until approval has been given by the Manager. Upon failure on the part of the Contractor to comply forthwith with any order of the Manager made under the provisions of this subsection, the Manager shall have the authority to remove and replace defective materials and to deduct the cost of removal and replacement from any money due or about to become due the Contractor.

6.6 STORAGE OF MATERIALS

Materials shall be stored so as to insure the preservation of their quality and fitness for the work. Unless otherwise provided the portion of the project site not required for public travel may be used for storage purposes and for the placing of the Contractor's facilities and/or equipment, and any additional space required shall be provided by the Contractor at his expense. Materials shall not be stored upon the project site except when and as permitted by the Manager. When considered necessary by the Manager, material shall be placed on wooden platforms or other hard, clean surfaces and under no circumstances shall it be in direct contact with the ground.

They shall be placed under cover when so directed. Stored materials shall be so located as to facilitate prompt inspection.

6.7 MATERIAL SAMPLES

The Contractor shall furnish for the approval of the Manager, any samples required by the specifications or that may be requested by the Manager of any and all materials or equipment he proposes to use. Unless specifically required, samples are not to be submitted with the bid.

No materials or equipment of which samples are required to be submitted for approval shall be used on the work until such approval has been given by the Manager, save only at the Contractor's risk and expense.

Each sample submitted shall have a label indicating the material represented, its place of origin, and the names of the producer, the Contractor and the building or work for which the material is intended. Samples of finished materials shall be so marked as to indicate where the materials represented are required by the drawings or specifications.

A letter in duplicate by the Contractor shall accompany each shipment of samples submitted and shall contain a list of the samples, the name of the building or work for which the materials are intended and the brands of the materials and names of the manufacturers.

The approval of any sample shall be only for the characteristics or for the use named in such approval and no other. Approval of a sample shall not be taken in itself to change or modify any contract requirement. All samples shall be provided by the Contractor at no extra cost to the project or to the Department.

SECTION 7 - LEGAL RELATIONS AND RESPONSIBILITY

7.1 LAWS TO BE OBSERVED

The Contractor shall at all times observe and comply with all federal, state and county laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

The Contractor shall indemnify and save harmless the Department and all of its officers, agents and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders or decrees, whether such violation is committed by the Contractor or his subcontractor or the employee of either or both or any other person, except when such violation is committed solely by the act or omission of the Department, its officers, agents or employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications or contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Manager in writing. Attention is directed to the following provisions of Hawaii Revised Statutes.

- (a) Hours of Labor (Section 104.2, HRS) - No laborer or mechanic employed on the jobsite of any public work of the State or any political subdivision thereof shall be permitted or required to work on Saturday, Sunday or legal holiday of the State or in excess of eight (8) hours on any other day unless he receives compensation for all hours worked on Saturday, Sunday or legal holiday of the State or in excess of eight (8) on any other day at a rate not less than one and onehalf times ($1\frac{1}{2}$) his basic hourly rate of pay. For the 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 laborers and mechanics on project of similar character in the State.

Where projects are financed by Federal Funds, appropriate Federal Labor Law shall be applicable.

- (b) Prevailing Wages (Section 104-2, HRS) - The Contractor or his subcontractor shall pay all mechanics and laborers employed on the jobsite, unconditionally and not less often than once a week, and without deduction or rebate on any account, except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those stated in the contract, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics.

The wages stated in the contract shall not be less than the wages which the Director of Labor and Industrial relations shall determine to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the State.

The rates of the wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the jobsite and a copy of such wages required to be posted be given to each laborer and mechanic employed under the contract by the Contractor at the time he is employed, provided that where there is a collective bargaining agreement the Contractor does not have to provide his employees the wage rate schedules.

The Manager may withhold from the Contractor so much of the accrued payments as may be considered necessary to pay to laborers and mechanics employed by the Contractor or any subcontractor on the jobsite. The accrued payments withheld shall be the difference between the wages required by this contract and the wages actually received.

In accordance with the provisions of Section 103.54, HRS, the bidder shall submit the requisite certification relative to conditions of employment and shall comply with said conditions during the period of the contract.

- (c) Payrolls and Payroll Records (Section 104-3, HRS) - A certified copy of all payrolls shall be submitted weekly to the Manager. The Contractor shall be responsible for the submission of certified copies of payrolls of all subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rate contained in the wage determination decision and also that the classifications set forth for each laborer and mechanic conform with the work he performed.

Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the Contractor and his subcontractors, if any, during the course of the work and preserved for a period of three (3) years thereafter. Such records shall contain the name of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. Such records shall be made available at a place designated by the Manager, Director of Labor and any authorized persons thereof for inspection who may also interview employees during working hours on the job.

- (d) Citizen Labor (Section 103-57, HRS) - No person shall be employed as a mechanic or laborer upon any public work carried on by the Department whether the work is done by contract or otherwise, unless such person is a citizen of the United States or eligible to become

such a citizen provided, however, that in the cases where it is not reasonably practicable to obtain such persons with those qualifications, persons without such qualifications may, with the approval of the Manager, be employed until persons with such qualifications competent for such services can be obtained.

- (e) Use of Explosives (Chapter 396, HRS) - When the use of explosives is necessary for the prosecution of the work and such use is approved by the Manager in writing, the Contractor shall use the utmost care not to endanger life or property. The storage and use of explosives shall be in strict accordance with the provisions of Chapter 396 and Rules of the State Department of Labor and Industrial Relations.
- (f) Preference for Hawaii Products (Section 103-41 through 103-48, HRS) - In order to comply with the intent of this law, the bidder must complete the form provided in the proposal.
- (g) Preference for American Products (Section 103-24, HRS) - It is the intent of the Manager that all products called for in the bidding document be of American origin. However, this does not preclude the use of foreign products. In the event a bidder desires to utilize a foreign product, the same shall be considered a substitution and subject to Subsection 6.3 - SUBSTITUTION OF MATERIALS AND EQUIPMENT.
- (h) Workers' Compensation Insurance (Chapter 386, HRS) - All workers employed on the project shall be insured during the entire duration of the contract in accordance with the provisions of Chapter 386, HRS.
- (i) Tax Clearance (Section 103-53, HRS) - Final settlement of the contract shall not be made until the Manager has received a tax clearance from the State Tax Department (Income Assessment and Audit Division and Taxation Division) to the effect that all delinquent taxes levied or accrued under State statutes against the Contractor have been paid, and a clearance from the respective County Director of Finance to the effect that all delinquent County assessments and taxes levied or accrued against the Contractor have been paid.
- (j) Industrial Safety - The Contractor shall take safety precautions and prosecute all work in accordance with Chapter 396, HRS. The Contractor's attention is directed to the "Rules and Regulations of the State Occupational Safety and Health Law" prepared by the Department of Labor and Industrial Relations which in addition to the above sections of the statutes shall be complied with in all respects during the period of the contract.
- (k) Listing of Joint Contractor and/or Subcontractors (Sections 103-29 and 103-33, HRS) - All bidders shall include the name and nature and scope of work to be performed by each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract.

(1) Contractor's Licenses (Chapter 444, HRS) - No person within the purview of this Law shall act, or assume to act, or advertise, as general engineering contractor, general building contractor or specialty contractor without a license previously obtained under and in compliance with the provisions of this law and the rules and regulations of the Contractors' License Board and Ordinances of the respective County.

7.2 PATENTED DEVICES, MATERIALS AND PROCESSES

If the Contractor is required or desires to use any design, device, material or process covered by letters, patent or copyright, the right for such use shall be procured by the Contractor from the patentee or owner. The Contractor and surety shall indemnify and save harmless the Department from any and all use of any such patented design, device, material or process, or any trademark or copyright in connection with the work to be performed under the contract and shall indemnify the Department for any costs, expenses and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution or after the completion of the work.

7.3 PERMITS AND LICENSES

The Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work.

7.4 SANITARY PROVISIONS

Unless so waived in writing by the Manager, the Contractor shall install toilet facilities conveniently located at the jobsite and maintain same in a neat and sanitary condition for the use of employees on the jobsite for the duration of the contract. The toilet facilities shall conform to the requirements of the State Department of Health. The cost of installing, maintaining and removing the toilet facilities shall be considered incidental to and paid for under various contract pay items for work or under the lump sum bids as the case may be, and no additional compensation shall be made therefor. These requirements shall not modify or abrogate in any way the requirements or rules of the State Department of Health.

7.5 BARRICADES, DANGER, WARNING AND DETOUR SIGNS

The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices and shall take all necessary precautions for the protection of the work and safety of the public. Highways closed to traffic shall be protected by effective barricades, and obstructions, on the road and shoulder areas, and shall be illuminated during hours of darkness. Suitable warning signs shall be provided to properly control and direct traffic.

The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the road by traffic, and at all intermediate points where the new work crosses or coincides with an existing road.

All barricades, warning signs, lights, temporary signals, and other protective devices must conform with the rules adopted by the Highway Safety Coordinator, State of Hawaii, and the Manual on Uniform Traffic Control Devices for Streets and Highways, 1978, published by the U.S. Department of Transportation, Federal Highway Administration, and any amendments or revisions thereof as may be made from time to time.

The provisions of the rules adopted by the Highway Safety Coordinator, State of Hawaii, pertaining to the color and design of traffic signs, barricades and other traffic control devices and which refer to the specifications of the 1961 edition of the "The Manual" shall be amended to read that such traffic control devices shall conform to the colors and designs specified in the 1978 edition of "The Manual."

Except as otherwise provided in the specifications, full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various contract items of work or lump sum bid and no additional compensation shall be allowed therefor.

7.6 PRESERVATION AND RESTORATION OF PROPERTY, TREES, MONUMENTS, ETC.

The Contractor shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the project; shall use every precaution necessary to prevent damage or injury thereto; shall use suitable precaution necessary to prevent damage to pipes, conduits and other underground structures; and shall protect carefully from disturbance or damage all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. The Contractor shall not injure or destroy trees or shrubs nor remove or cut them without proper authority.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, negligence or misconduct in the execution of the work, or in consequence of the non-execution thereof on the part of the Contractor, such property shall be restored by the Contractor and at the Contractor's expense, to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring same, or he shall make good such damage or injury in an acceptable manner. If the Contractor fails to carry out the provisions of this subsection, the Manager shall have the right to have them carried out and deduct the same from any money due or to become due the Contractor.

7.7 RESPONSIBILITY FOR DAMAGE CLAIMS

The Contractor shall indemnify and save harmless the Department and/or the County officers and employees, from all suits, actions or claims of any character brought because of any injuries or damage received or sustained by any person, persons or property on account of the operations of the Contractor, the subcontractors, agents or employees; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, negligence or misconduct of the Contractor, his subcontractors, agents or employees; or because of any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Workers' Compensation Act," or any other law, ordinance, order or decree; or from any claims or amounts recovered for the payment for materials, supplies, tools, or labor; and so much of the money due the Contractor under and by virtue of his contract as may be considered necessary by the Manager for such purpose may be retained for the use of the Department; or, in the case no money is due, the Contractor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid are settled and suitable evidence to that effect furnished to the Manager; except that money due the Contractor shall not be withheld when the Contractor produces satisfactory evidence that he is adequately protected by public liability and property damage insurance and that the Department and/or the County is adequately protected as an additional insured to said insurance policy.

It is not the intention of the parties to this contract to make the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to the contract to maintain a suit for personal injuries or property damage based on a contract theory of liability. In any event, the Contractor shall hold and save the Department harmless and defend the Department from suits and claims for personal injury or property damage where such injuries or damage are caused by or arise out of, either in whole or in part, the negligent acts or omissions of the Contractor, its agents or employees, except where such injuries or damage are caused exclusively by the negligent acts or omissions of the Department, its officers or employees.

7.8 CONTRACTOR'S RESPONSIBILITY FOR WORK

Until acceptance by the Manager of any part or all of the construction as provided for in these specifications, the construction shall be under the charge and care of Contractor, who shall take every necessary precaution against injury or damage to any part of the work by the action of the elements or from any other cause whatsoever, whether arising from the execution or from the non-execution of the work. Before its completion and acceptance by the Manager, the Contractor shall rebuild, repair, restore and make good at his own expense all injuries, or damage to any

portion of the work occasioned by any of the above causes. The Contractor shall be responsible for coordinating the work of all trades on the job and shall be liable for the acts of the subcontractors as the prime contractor on the project.

7.9 PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the above provisions or in exercising any power or authority granted to him by this contract, there shall be no liability upon said Manager or his authorized representatives, either personally or as an official of the Department and/or County it being understood that in such matters, he acts as the agent and representative of the Department and/or County.

7.10 NO WAIVER OF LEGAL RIGHTS

The Manager shall not be precluded or estopped by any measurements, estimate or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the contract.

The Manager shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and his sureties such damages as it may sustain by reason of his failure to comply with the terms of the contract.

Neither the acceptance by the Manager or any representative of the Manager, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Manager shall operate as a waiver of any portion of the contract, or of any power herein reserved, or any right to damage herein provided. A waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

7.11 PROPERTY RIGHTS IN MATERIALS

It is further agreed that nothing in these specifications or contract shall be construed as vesting in the Contractor any right to the materials used after they have been attached or affixed to the work.

7.12 INSURANCE

The Contractor shall not commence any work under a contract until he has obtained from responsible insurance companies all insurance as required herein. The Contractor shall maintain this insurance in full force and

effect throughout the term of the contract and until the work to be performed has been accepted by the Manager. Copies of insurance certifications for each type of insurance shall be submitted to the Manager in accordance with Subsection 3.6 - EXECUTION OF THE CONTRACT.

(a) Builders Risk

1. New Buildings - The Contractor shall take out a policy of builder's risk insurance, for the full insurable value of the insurable improvements of the project from a company licensed to do business in the State of Hawaii, naming the Department as co-insured under each policy, covering all work, labor and materials furnished by such contractor and all his subcontractors against loss by fire, wind, storm, lightning, explosion and other perils included in the standard broad form of extended coverage.
2. Building Renovation Contract - The Contractor shall take out insurance in the amount equivalent to the contract amount, with the Department named as co-insured under each policy, covering all work, labor and materials furnished by such contractor and all his subcontractors against loss by fire, wind, storm, lightning and explosion.
3. Site Development - The Contractor is not required to obtain builder's risk insurance but required to obtain other insurance specified in Subsection 7.12 - INSURANCE. However, if any building or structure is constructed or renovated on site development contracts, either items 1) New Buildings, or 2) Building Renovation Contract, above, shall apply.

(b) Workers' Compensation - The Contractor shall, in accordance with Sections 386-121 to 386-129 inclusive, HRS, take out adequate workers' compensation insurance for all of his employees who shall be engaged in work at the site of the project, and in case any part of such Contractor's contract is sublet, the Contractor shall require his subcontractor to maintain such insurance for all the subcontractor's employees who shall be so engaged, unless the latter's employees are protected by the principal Contractor's insurance.

(c) Comprehensive Personal Injury and Property Damage Insurance - The Contractor shall take out comprehensive personal injury and property damage liability insurance which protects the Contractor and all of his subcontractors from claims for damages to property and for personal injury which may arise from or be caused by the operations under the contract, whether the operations be by the Contractor or by any subcontractor or by anyone directly or indirectly employed by either the Contractor or subcontractor. All insurance shall cover the Contractor for all work performed under the contract, all work

performed incidental thereto or directly or indirectly connected therewith, including traffic detour work or other work performed outside of the work area, and all change orders. The insurance policies shall not contain any clause to the effect that the insurer is not liable on account of any accident out of work performed by subcontractors or their employees.

The Department shall be named as an additional insured on each insurance policy and the Department shall be provided with the same extent of insurance coverage as that provided for the Contractor.

The comprehensive personal injury and property damage liability insurance shall have the following minimum limits of liability:

Bodily Injury Liability	-\$250,000 each person
	-\$500,000 each occurrence
Property Damage Liability	-\$100,000 each occurrence

7.13 NON-DISCRIMINATION IN COUNTY CONTRACTS

During the term of the contract, the Contractor shall comply with the following:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall assure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin.

Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The Contractor agrees to post in conspicuous places notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.

- (b) The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, or national origin.
- (c) In the event of the Contractor's non-compliance with the non-discrimination clauses of this contract, this contract may be cancelled or suspended in whole or in part and the Contractor may be declared ineligible for further contacts with the Department until such time that the Contractor by satisfactory evidence, in good faith, terminates his discriminatory practices or procedures.

- (d) The Contractor who subcontracts any portion of the contract shall assure the Department that such subcontractor shall abide by the non-discrimination provisions stated herein, and agrees that any subcontractor who is found in violation of these provisions shall subject the principal Contractor's contract with the Department to be terminated or suspended pursuant to subsection (c) above.
- (e) The Manager may direct any bidder, prospective Contractor or subcontractor to submit a statement in writing signed by an authorized officer, agent, or employee of the contracting party that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, or national origin, and that the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provision stated herein.
- (f) The Corporation Counsel or his deputy in his absence may, with the approval of the Manager when he deems that special circumstances in the County interest so require exempt a Contractor or subcontractor from the requirements stated herein in any specific contract, subcontract or purchase order. Such special circumstances may include, but not limited to, contracts below TWO THOUSANDS DOLLARS (\$2,000.00); personal service contracts requiring particular expertise; and contracts excludable from bidding procedures under Sections 103-22 and 103-23, HRS.

SECTION 8 - PROSECUTION AND PROGRESS

8.1 PROSECUTION OF THE WORK

The Contractor shall begin work under the contract within ten (10) consecutive working days from the date of "Notice to Proceed" specified in the written order of the Manager, including such date. The Contractor shall notify the Manager at least three (3) consecutive working days before beginning work on the portion or portions previously agreed upon between the Manager and the Contractor. At the beginning of construction or at any subsequent suspension and resumption of work, the Contractor shall notify the Manager at least three (3) consecutive working days before beginning actual operations. He shall start the work in the area approved by the Manager.

Should the Contractor begin work in advance of the notice to proceed as provided above, any work performed by him in advance thereof shall be subject to the following conditions and shall be considered as having been done by him at his own volition and risk and as a volunteer until the contract has been approved as provided for in Subsection 3.6 - EXECUTION OF THE CONTRACT, and Section 103-34, HRS.

- (a) Under no circumstances shall the Contractor commence construction operations until he has notified the Manager of his intentions and has been advised by the Manager in writing that the project site is available to the Contractor.
- (b) On commencing operations, the Contractor shall take all precautions required for public safety and shall observe all provisions of these Requirements and the Special Provisions relating thereto.
- (c) In the event the contract is not approved, as provided above, the Contractor shall, at his own expense, do such work as is necessary to leave the site in a neat condition to the satisfaction of the Manager. The Contractor shall not be reimbursed for any expenses incurred.
- (d) All work done according to the contract prior to its approval, as provided above, shall be performed in accordance with the contract documents and shall, if the contract is approved, be considered authorized work and shall be paid for as provided in the contract.

8.2 WORKING HOURS

Prior to beginning operations, the Contractor shall notify the Manager in writing of the time in hours and minutes, A.M. and P.M., respectively, at which he desire to begin and end the day's work.

If the Contractor desires to change his working hours, he shall request the Manager's approval three (3) consecutive working days prior to the date of effecting the change.

Work in excess of eight (8) hours in any one day or on Saturday, Sunday or legal holiday of the State is permissible when approved by the Manager in writing, or as called for elsewhere within the specifications. No work shall be done at night unless permission is obtained as set forth in the above paragraph.

8.3 OVERTIME PAYMENT FOR INSPECTION SERVICE

In addition to complying with the administrative requirements as stated in Subsection 8.2 for overtime work, the Contractor must pay for the required overtime inspectional services rendered by the Department unless otherwise instructed in the contract.

Should permission to work overtime or at nights or on any such day be granted by the Manager, or if work requiring overtime compensation for Department employees is necessary as a result of the Contractor's scheduled operations, whether this work occurs on or away from the project site, the Contractor shall reimburse the Department the cost of engineering and inspection necessary for the proper execution and control of the work. The costs chargeable to the Contractor shall include the following:

- (a) The cost of salaries for the engineering and inspectional personnel as determined by the Department in accordance with the applicable sections of the respective County's Civil Service Rules and Regulations, as amended. In addition to the cost of the salaries as determined above, the Contractor shall reimburse the Department's share of contributions to the employees' retirement, medical plan, social security, vacation, sick leave, worker's compensation funds, per diem, and other applicable fringe benefits and overhead expenses.
- (b) The transportation cost incurred by the Department employees in connection with the engineering and inspectional work.
- (c) The rate of overtime cost shall be 1-1/2 times the hourly wage rate of the employee, computed to the nearest fifteen (15) minutes, plus overhead and administrative charges, pursuant to respective sections of the County's Code.

The monies due the Department for engineering and inspectional work and use of vehicles and equipment as determined hereinabove shall be billed separately or deducted from the monies due or to become due the Contractor. In any event, the Contractor shall not pay the Department employees directly.

Any hours worked in excess of the normal eight (8) working hours per day or on Saturdays, Sundays or legal holidays shall not be considered a working day under the provisions of Subsection 7.1 - LAWS TO BE OBSERVED.

The Manager hereby reserves the right to cancel the overtime, night, Saturday, Sunday or legal holiday work when in the opinion of the Manager, there is no necessity for such work or when such work is detrimental to progress of the work.

No overtime work shall be done by the Contractor without the presence of at least one authorized Department's Inspector unless otherwise directed by the Manager.

8.4 PROGRESS SCHEDULE

Before commencing work on the project, the Contractor shall submit to the Manager four (4) complete sets of the progress schedule showing thereon the various divisions of the work and his proposed sequence of operations such as trenching, pipe installation, pump installation, electrical work, etc.

If required by the Manager, the Contractor shall within ten (10) consecutive working days submit supplementary progress schedules which shall indicate approximately the percentage of work scheduled for completion at any time along with the amounts estimated to be payable for work completed per monthly period. The Manager may also request for a revised progress schedule to reflect the actual progress of the project and also changes incorporated in the contract.

8.5 LIMITATIONS OF OPERATIONS

The Contractor shall at all times conduct the work in such manner and in such sequence as shall insure the least possible interference with traffic and passage ways and he shall furnish convenient detours.

In the event that other contractors are also employed on the jobsite, the Contractor shall arrange his work and dispose of his materials so as not to interfere with the operations of the other contractors engaged upon adjacent work and to join his work to that of others and existing building in a proper manner, and in accordance with the intent of the plans and specifications, and to perform his work in the proper sequence in relation to that of others, all as may be directed by the Manager, if he so chooses.

Each Contractor shall be held responsible for any damage done by him or his agents to the work performed by another contractor. Each Contractor shall so conduct his operations and maintain the work in such condition that adequate drainage shall be in effect at all times.

In the event that the Contractor fails to prosecute his work as provided above or disregards the directions of the Manager, the Manager may suspend the work until such time as the Contractor provides for the prosecution of the work with minimum interference to traffic or other contractors.

8.6 ASSIGNMENT OF CONTRACTS AND CLAIMS

The Contractor shall not assign nor otherwise transfer this contract or any part hereof or any interest herein or any monies due or to become due hereunder without the prior written consent of the Manager. The consent to assign or transfer shall not operate to relieve the Contractor or his sureties of any of his or its obligations under this contract nor shall the Manager consent to any assignment of a part of the work under the contract.

The Contractor may assign monies due or to become due him under the contract and such assignment shall be recognized by the Department, if give proper notice thereof, to the extent permitted by law; but any assignment of monies shall be subject to all proper set-offs in favor of the Department and to all deductions provided for in the contract and particularly all monies withheld, whether assigned or not, shall be subject to being used by the Department for the completion of the work in the event that the Contractor should be in default therein.

8.7 CHARACTER OF WORKER OR 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 in the manner and within the time required by the contract.

- (a) Character and Proficiency of Worker - All workers must have sufficient skill and experience to perform properly the work assigned to them. All workers engaged on special work or skilled work such as pump installation, concrete structures, electrical installation, or pipeline installation or in any trade shall have sufficient experience in such work to properly and satisfactorily perform it and operate the equipment involved, and shall make due and proper effort to execute the work in the manner prescribed in these specifications; otherwise, the Manager may take action as prescribed herein.

Any foreman or worker employed on the project by the Contractor or by any Contractor or by any subcontractor who, in the opinion of the Manager or his authorized representative, 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 Manager, be removed forthwith by the

Contractor or subcontractor employing such foreman or workman and shall not be employed again in any portion of the work without the written consent of the Manager. Should the Contractor or subcontractor continue to employ, or again employ such a person or persons on the project, the Chairman shall withhold all estimates which are or may become due, or the Manager shall suspend the work until such orders are complied with.

- (b) Insufficient Workers - In the event that the Manager, in his judgment, finds the condition whereby insufficient workmen are present to accomplish the work and no corrective action is taken by the Contractor after being informed, the Chairman reserves the right to terminate the contract as provided for under Subsection 8.12 - TERMINATION OF CONTRACT.
- (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 is satisfactory. All equipment, tools, and machinery used for handling materials and executing any part of the work shall be subject to the approval of the Manager and shall be maintained in a satisfactory working condition.

Equipment used on any portion of the work shall be such that no injury to the work, adjacent property or other objects shall result from its use. In the event that the Manager, in his judgment, finds that the equipment is unsatisfactory to prosecute the work in the manner as provided above, he shall order that they be removed and replaced with adequate equipment. If the Contractor fails to provide adequate equipment for the work, the contract may be terminated as provided for under Subsection 8.12 - TERMINATION OF CONTRACT.

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 Manager in order to obtain maximum production under the prevailing conditions.

8.8 CONTRACT TIME

The total contract time allowed for the performance of the work shall be the number of working days shown in the contract as awarded, plus any additional working days authorized in writing as provided hereinafter.

- (a) Unsuitable Weather - For delays caused by or suspension due to unsuitable weather conditions or adverse conditions resulting therefrom, the Contractor shall be granted one work day extension for each working day delay due to such causes provided however, that in the case of delays due to unsuitable weather conditions, the contractor informs the Manager of such delays on the day it occurs.

Unreported delays shall not be considered for extensions of contract time.

A working day shall be as defined in Subsection 1.2 - DEFINITIONS.

- (b) Scope Changes - For increase or decrease in the scope of work caused by alterations, additional or decreased work made under Subsection 4.2 - CHANGES, the Contractor shall be granted working day extension or deduction in proportion to the original number of working days allowed as to the cost of the additional or reduced work bears to the original contract amount. However, should the Contractor feel that the contract time as determined above is not a reasonable figure based on the effect it shall have on his normal operation had this change not been requested, the Contractor must so indicate in writing when he submits his detailed cost breakdown as required by Subsection 4.2 - CHANGES.

The Contractor must state how his normal operation shall be affected including statements from his subcontractors, suppliers and/or manufacturers as to the extent of the delay.

Contract time extension shall not be granted for changes which the Manager determines unjustifiable due to lack of supporting evidence or the change is of such nature that the final completion date shall not be affected. In any case, for all time extensions or reductions, the Manager shall ascertain the facts and extent of the time involved and his findings of the facts thereon shall be final and conclusive.

- (c) Unforeseen Delays - For delays caused by acts of God, or of the public enemy, fire, floods, epidemic, quarantine restrictions, strikes, or walkouts, and freight embargoes, the Contractor may be granted an extension in working days provided that the Contractor notify the Manager in writing of such delays within ten (10) consecutive working days with the following facts:

1. A statement beginning from the date of award of the contract to the present in a chronological listing, that the above circumstances have caused certain material, equipment and labor shortages which shall delay the completion of the project.
2. Submit evidence substantiating the delay of all the material or equipment affected by the circumstances covered by this subsection in form of order requests, bill of lading, packing slip, delivery tag, etc.
3. A statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances shall continue to prevent completion of the project.

The Manager shall evaluate all time extension requests and shall ascertain the facts and extent of the time involved and his findings of the facts thereon shall be final and conclusive.

No allowance shall be made for a delay or suspension of the work due to the fault of the Contractor.

- (d) Elapsed Working Days - The count of elapsed working days, to be charged against contract time, shall begin from the date of "Notice to Proceed" and shall continue consecutively to and include the date of completion of the work as determined by the Manager, except that working days elapsing during periods of suspension of the work by the Manager shall be computed as follows:

When the performance of the work is totally suspended for one or more working days by order of the Manager in accordance with Subsection 8.9(a) - Weather - and Subsection 8.9(c) - Soil Conditions - the number of days from the effective date of the Manager's order to resume operations shall not be counted as working days. Days elapsing during any period of suspension in accordance with Subsection 8.9(b) shall be counted as working days. During periods of partial suspension of the work, the number of working days to be charged shall be computed by multiplying the number of working days of original contract time by the ratio of the amount earned during the period of partial suspension to the original contract amount. In no case shall the number of working days to be charged as contract time for a period of partial suspension exceed the total elapsed time in working days of the partial suspension.

The Manager shall prepare for each estimate made under the provisions of Subsection 9.6 - PROGRESS AND PARTIAL PAYMENTS - a statement of the working days charged during the period, the number of working days in the contract, the working days' extensions granted for reasons stated herein and the number of working days remaining to complete under the contract.

Copies of such statement shall be promptly submitted to the Contractor for his approval and signature. The Contractor shall signify his approval of the statement by signing same or submit his objections within five (5) days setting forth in what respect the statement is incorrect. Failure of the Contractor to submit his objections within the specified time shall mean that the Contractor has accepted the Manager's statement as being correct.

- (e) No consideration shall be made for extension of contract time due to delays to the contract caused by the failure of the Contractor to submit for approval by the Manager shop drawings, descriptive sheets, material samples, color samples, etc. except as covered in Subsection 8.8(c) - Unforeseen Delays.

8.9 SUSPENSION OF WORK

The Manager may, by written order, suspend the performance of the work, either in whole or in part for such periods as he may deem necessary due to:

- (a) Weather - Weather or soil conditions considered unsuitable for prosecution of the work, or
- (b) Non-Compliance - Failure on the part of the Contractor to:
 - 1. Correct conditions unsafe for the general public or for the workmen
 - 2. Carry out orders given by the Manager, or
 - 3. Perform any provisions of the Contract
- (c) Soil Conditions - Unforeseen soil conditions where a redesign of foundation is necessary or when any other redesign for any reason deemed necessary by the Manager.

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.

Any adjustment of contract time for suspension of work shall be made as provided in Subsection 8.8 - CONTRACT TIME.

In the event that the Contractor is ordered by the Manager in writing as provided herein to suspend all work under the contract in accordance with Subsection 8.9(c) - Soil Condition - the Contractor may be reimbursed for actual money expended towards the project during the period of suspension. No allowance shall be made for anticipated profits.

Claims for such compensation shall be filed with the Manager within ten (10) consecutive working days after the date of the order to resume work or such claims shall not be considered. Together with the claim, the Contractor shall submit substantiating documents covering the entire amount shown on the claim. The Manager shall take the claim under consideration and may make such investigations as are deemed necessary and shall be the sole judge as to the equitability of such claim and his decision shall be final.

No provisions of this section shall be construed as entitling the Contractor to compensation for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under the contract, for partial suspensions of work or for suspensions made by the Manager under the provisions of Subsection 8.9(b) - Non-Compliance.

8.10 DISPUTES

In case the Contractor deems extra compensation is due him for work or materials not clearly covered in the contract, or not ordered by the Manager as an extra, the Contractor shall notify the Manager in writing of his intention to make claim and shall afford the Manager every facility for keeping actual cost of the work. Failure on the part of the Contractor to give such notification or to afford the Manager proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by the Contractor and the keeping of costs by the Manager shall not in any way be construed to prove the validity of the claim. When the work has been completed, the Contractor shall within ten (10) consecutive working days file his claim in writing for extra compensation with the Manager who shall review the claim and render his decision which shall be final.

Should a dispute occur, the Contractor shall follow the procedures outlined above and diligently continue the work. Time extension shall not be granted the Contractor for temporarily halting his operation due to disputes.

8.11 FAILURE TO COMPLETE THE WORK ON TIME

It is mutually agreed by and between the parties hereto that time shall be an essential part of this contract and that in case of the failure on the part of the Contractor to complete his contract within the time specified and agreed upon, the Department shall be damaged thereby; and the amount of said damages, inclusive of expenses for inspection, superintendence and necessary traveling expenses, being difficult if not impossible of definite ascertainment and proof, it is hereby agreed that the amount of such damages shall be the appropriate sum set forth below in the Schedule of Liquidated Damages as liquidated damages for every working day's delay in finishing the work in excess of the number of working days prescribed; and the Contractor hereby agrees that said sum shall be deducted from monies due the Contractor under the contract or if no money is due the Contractor, the Contractor hereby agrees to pay to the Department as liquidated damages, and not by way of penalty, such total sum as shall be due for such delay, computed as aforesaid.

SCHEDULE OF LIQUIDATED DAMAGES

Total Amount Including Extras Set up in Contract From More Than:	To and Including:	Amount of Liquidated Damages Per Working Day
\$ 0	\$ 25,000	\$ 50.00
25,000	50,000	75.00
50,000	100,000	100.00
100,000	500,000	150.00
500,000	1,000,000	200.00
1,000,000	2,000,000	300.00
2,000,000	---	500.00

The findings of the Manager shall be accepted by the parties hereto as final; but any allowance of time and remission of charges shall in no other manner affect the rights or obligations of the parties under this contract, nor be construed to prevent action under Subsection 8.12 - TERMINATION OF CONTRACT - in case the Contractor shall fail in the judgment of the Manager to make reasonable and satisfactory progress after such allowance of time has been granted.

8.12 TERMINATION OF CONTRACT

The contract of which these specifications form a part may be terminated by the Manager for any one of the following reasons:

- (a) Substantial evidence that the progress being made by the Contractor is insufficient to complete the work within the specified contract time;
- (b) Failure to prosecute or complete the work expeditiously at any time; or
- (c) Failure on the part of the Contractor to observe any other parts of the specifications;
- (d) Failure of the Contractor to start the work ten (10) consecutive working days after the date given in the notice to proceed;
- (e) Failure of the Contractor promptly to make good any defects of any nature, the correction of which has been directed in writing by the Manager;
- (f) Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetuating fraud on the Department in the construction or work under contract; or
- (g) After award has been made, the Contractor makes changes in his list of subcontractors or joint contractors submitted in his proposal, which in the opinion of the Manager are unjustifiable and substantive.

Changes directly due to the following shall not be deemed unjustifiable and substantive:

- (a) Failure, refusal or inability of a subcontractor named in the Contractor's original list to enter into a subcontract.
- (b) Insolvency of the subcontractor.
- (c) Inability of the subcontractor to furnish a reasonable performance bond.
- (d) Suspension or revocation of the subcontractor's license.

(e) Inability of the subcontractor to comply with other requirements of the law applicable to contractors, subcontractors and public works projects.

In case of termination, the Manager shall limit payment to the Contractor to the part of the contract satisfactorily completed at the time of termination. Termination shall not relieve the Contractor or Surety from liability for liquidated damages theretofore incurred.

If the Manager finds that any laborer or mechanic employed on the jobsite by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the specifications, or has not received his full overtime compensation, the Manager may by written notice to the Contractor terminate his 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 work or part by contract or otherwise; and the Contractor and his sureties shall be liable to the Department for any excess costs occasioned thereby.

Before the contract is terminated, the Contractor and the Contractor's bondsman or surety shall first be notified in writing by the Manager of the conditions which make termination of the contract imminent. Seven (7) consecutive calendar days after this notice is mailed to the addresses given in the proposal, if in the judgment of the Manager no effective effort has been made by the Contractor to correct the condition complained of, then the bondsman or surety shall again be notified to that effect and, if after the expiration of seven (7) consecutive calendar days more no action effective in the judgment of the Manager has been taken either by the Contractor or by the bondsman or surety, the Manager may declare the contract terminated and notify the Contractor and the bondsman or surety accordingly.

Upon receipt of a notice from the Manager that the contract has been terminated, the Contractor shall immediately discontinue all operations. The Commission may then proceed with the work, in any lawful manner that he may elect, until it is finally completed.

The Department reserves the right to take possession and to use if necessary any machinery, implements, tools or materials of any description that shall be found upon the work. All equipment and materials shall be accounted for.

In the case the Department decides to use any machinery, implements, tools or materials, rental rates and material cost shall be computed. If the total cost is more than the contract price, the difference shall be made up either by the Contractor or his surety. If the total cost is less than the contract price, the difference shall be paid to the Contractor or his surety. In case of termination, all expenses incident to ascertaining and collecting losses under the bond including engineering and legal services shall be assessed against the bond.

If the Contractor fails to commence to make good any defects of any nature within five (5) days after the correction thereof has been requested in writing by the Manager and thereafter to expeditiously complete the correction of said defects, the Manager may without further notice and without termination of contract, correct the defects and deduct the cost thereof from the contract price.

8.13 FINAL SETTLEMENT OF THE WORK CALLED FOR IN THE CONTRACT

The work called for in the contract shall be considered settled when all work has been fully completed including the "Punch List" items and the following submitted by the Contractor:

- (a) All written warranties required by the contract.
- (b) All required "As-Built" drawings on contract drawings furnished by the Department.
- (c) Complete weekly payrolls for both the General and Subcontractors.
- (d) Certificate of Plumbing and Electrical Inspection, as applicable in the contract.
- (e) Certificate of Building Occupancy as required, as applicable in the contract.
- (f) Certificate of Soil and Wood Treatments, as applicable in the contract.
- (g) Certificate of Water System Chlorination, as applicable in the contract.
- (h) Certificate of Elevator Inspection, Boiler and Pressure Pipe Installation, as applicable in the contract.
- (i) All clearances and/or approvals from any government agency or private entity having jurisdiction over any portion of the work performed.
- (j) Maintenance Service Contract and two (2) copies of a list of all equipment installed, as applicable in the contract.
- (k) All other contract documents required by the Contract.

Immediately upon receiving the formal letter of acceptance of the work called for in the contract, the Contractor shall be relieved of the duty of maintaining and protecting the work as a whole, relieved of his

responsibility for injury to persons or property or damage to the work which occurs after the formal acceptance by the Manager unless such injury or damage is caused by a defect in the work conducted under the contract, and he shall not be required to perform any further work thereon except as set forth in the specifications.

8.14 FINAL SETTLEMENT OF CONTRACT

The contract shall be considered complete when all work has been completed and accepted in accordance with the provisions of Subsection 5.10 - FINAL INSPECTION - and Subsection 8.13 - FINAL SETTLEMENT OF THE WORK CALLED FOR IN THE CONTRACT - and submittal of:

(a) Tax Clearance

1. State Clearance Certificate (Income Assessment and Audit Division).
2. State Division of Taxation certificate.
3. County Director of Finance clearance certificate for delinquent assessments and taxes.

(b) Satisfactory evidence that all claims for all persons, firms, or corporations who have done work or supplied materials, tools, equipment machinery or other commodities or services have been paid or satisfactorily secured.

(c) Certificate of release from each subcontractor.

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

(e) Non-Gratuity Affidavit (See Appendix D for Sample of Affidavit)

(f) All other documents as required by the contract.

The date of approval by the Manager of the final voucher for payment shall constitute the date of final settlement of the contract. This action shall not preclude consideration of any claim which the Contractor, by appropriate statement on the final voucher, has reserved the right to submit in connection with the contract. The Contractor shall then be released from further obligations except as set forth in the contract.

8.15 GUARANTEE OF WORK

(a) Except as otherwise specified, all work shall be warranted 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 listed in the letter of final acceptance of the contract. All guarantee of work shall be transmitted in writing.

(b) If, within any warranty period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Manager 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) days and without expense to the Department commence to:

1. Place in satisfactory condition in every instance all of such warranted work, correct all defects therein; and
2. Make good all damages to the building or work or equipment or contents thereof.

Provided, however, that should the Manager determine that immediate repair and/or adjustments to any material or equipment are necessary in the best interest of the Department and/or public, such repairs and/or adjustments may be performed by the Department all all costs thereof shall be paid for by the Contractor.

Performance of any work by the Department, as mentioned above, within the warranty period shall not relieve the Contractor of any provisions covered by such warranties.

The Contractor shall be notified by the Department within a reasonable time of any such immediate work done by the Department.

(c) Whenever manufacturers' warranty on any product specified for the project exceeds one year, this warranty shall become part of this contract thereof.

(d) The Contractor shall also save harmless the Department from any and all loss or expense by reason of any and all claims, suits or actions due to any and all costs, expenses or charges arising out of any and all defects or faults by reason of defective or faulty materials or workmanship used in or upon the performance of the work covered under the contract, or any costs, expenses, or charges connected therewith, whether said defects or defaults in the said work are known prior to the final acceptance of the said work or discovered within the period of twelve (12) months thereafter or whether said claims, suits, or actions are brought or prosecuted before or after the final acceptance of the said work and within the stated period thereafter.

SECTION 9 - MEASUREMENT AND PAYMENT

9.1 MEASUREMENT OF QUANTITIES

All work completed under the contract shall be measured by the Manager according to United States Standard measures, unless otherwise agreed upon in writing. These measurements shall be considered correct and final unless the Contractor has protested same to the Manager and has demonstrated the existence of an error by actual measurement on the ground before the work has progressed in a manner which would prohibit a proper check.

All measurements of the area of the applicable installations shall be made in the horizontal projection of the actual surface. All measurements of pipelines headers, headers, fences and any other type of construction which is to be paid for by its length, shall be made in the horizontal projection of the actual length, (except piles, which shall be by actual length). All materials which are specified for measurement by the cubic yard ("Loose Measurement" or "Measured in the Vehicle") shall be hauled in approved vehicles and measured therein at the point of delivery on the road.

Approved vehicles for this purpose may be of any type or size satisfactory to the Manager, provided that the body is of such type that the actual contents may be readily and accurately determined. Unless, all approved vehicles on a job are of uniform capacity, each approved vehicle must bear a plainly legible identification mark indicating the specific approved capacity. The inspector may reject all loads not hauled in such approved vehicles.

9.2 SCOPE OF PAYMENTS

The Contractor shall accept the compensation as herein provided, in full payment for furnishing all materials, labor, tools and equipment necessary to the completed work and for performing all work contemplated and embraced under the contract, also for all loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until its final acceptance by the Manager, and for all risks of every description connected with the prosecution of the work; also for all expenses incurred in consequence of the suspension or discontinuance of the work as herein specified, and for any infringement of patent, trademark or copyright, and for completing the work according to the plans and specifications.

9.3 PAYMENT AND COMPENSATION FOR ALTERED QUANTITIES

When alterations in plans or quantities of work as hereinabove provided for are ordered and performed, and when such alterations result in increase or decrease of the quantity of work to be performed, the Contractor shall accept payment in full at the contract unit price for the actual quantities of work done and no allowance shall be made for anticipated profits.

9.4 PAYMENT FOR ADDITIONAL WORK

Additional work as defined in Subsection 4.2(c) - Additional Work, when ordered, shall be paid for under an approved change order in accordance with the terms provided herein. Work performed for approved change order shall be paid in accordance with Subsection 9.4(a) - Negotiated Work. If the change order is protested, work shall be done and paid in accordance with Subsection 4.2(e) - Force Account Work - and Subsection 9.4(b) - Force Account Work, respectively.

- (a) Negotiated Work - When payment is to be made for additional work directed by an approved change order, the total price for the work contained in the change order shall be considered full compensation for materials, labor, insurance, taxes, equipment rental and supervision.
- (b) Force Account Work - Where payment is to be made on a force-account basis, all work performed or labor and materials furnished shall be paid for as follows:
 - 1. For all labor (including foreman when authorized by the Manager) including public liability, property damage and workmen's compensation insurance, contributions made to the State as required by Chapter 383, HRS, and for taxes paid to the Federal Government as required by the Social Security Act, approved August 14, 1935, as amended, the Contractor shall receive the current local wage rates, to be agreed upon in writing before starting such work, to which shall be added an amount equal to fifteen percent (15%) of the sum thereof. No allowance shall be made for general superintendency, timekeeping, office work, for the use of small tools and ordinary equipment.
 - 2. For all materials entering permanently into the work, the Contractor shall receive the actual cost of such material delivered to the work, including freight and hauling charges as shown by the original receipted bills, to which cost shall be added a sum equal to fifteen percent (15%) thereof.
 - 3. For any machinery or special equipment, other than small hand operated tools, at the rental rates agreed upon in writing prior to any work being done. The rental rates are specified in the current edition of "Rental Rates for Construction Equipment" prepared by the Associated Equipment Distributors with the following modifications:

For equipment used three (3) consecutive working days or less, the hourly rental rate shall be the daily rate divided by 8; for equipment used four (4) consecutive working days or more, but not over two (2) consecutive weeks, the hourly rental rate shall be the weekly rate divided by 40; for equipment used over two (2) consecutive weeks, the hourly rental rate shall be the

monthly rate divided by 175. These rates shall include the cost of fuel, lubricants and repairs.

The hourly rate for the operators for the various equipment shall be by the contract wage schedule.

The hourly rental rates for equipment not listed in the above-mentioned publication shall be those agreed upon in writing by the Contractor and the Manager prior to use of the equipment. These rates also shall include fuel, lubricants and repairs.

The above price paid for equipment rental rates does not include the cost of transporting or hauling any necessary equipment to the jobsite. The cost of transporting and hauling of equipment shall be paid as a separate item.

No percentage shall be allowed on the equipment rental rates, except for gross income taxes.

To the sum of the costs of labor, materials and equipment (including the fifteen percent (15%) applied to the labor and materials costs), there shall be added a gross income tax in accordance with Chapter 237, HRS, as amended.

The above percentages shall be applied but once to the respective costs as provided above and dual percentage costs by reason of a subcontractor performing the work for the prime contractor shall not be allowed.

Payments shall not be made for additional work on a forceaccount basis until the wages to be paid and the rental to be paid on special equipment not covered as specified above have been agreed upon in writing before start of such work.

The compensation as provided above in 1, 2 and 3 shall be received by the Contractor as payment in full for work done on a force-account basis including superintendency, overhead, use of tools and equipment for which no rental is allowed, profit and all taxes in connection therewith.

The Contractor and Manager shall compare records of the work performed on a force-account basis at the end of each day.

Copies of these records shall be made on suitable forms and signed by both the Contractor and Manager. These daily reports shall thereafter be considered the true record of the forceaccount work done.

Claims for work done on a force-account basis shall be submitted to the Manager by the Contractor upon certified quadruplicate statements to which shall be attached original receipted bills and invoices covering the costs for the freight and haulage charges on all materials permanently entered into such work; such statements shall be filed not later than the tenth (10th) day of the month following that in which the work was actually performed.

9.5 DEDUCTIONS FROM PAYMENTS

The Department may withhold from the Contractor so much of the accrued payments as may be considered necessary to pay to laborers and mechanics employed by the Contractor or any subcontractor on the jobsite the difference between the wages required by the contract or specifications and the wages actually received.

9.6 PROGRESS AND PARTIAL PAYMENTS

If, in the judgment of the Manager as reflected in Subsection 8.8 - CONTRACT TIME - the work is progressing satisfactorily, the Manager shall make an estimate each month based on the items of work performed and materials incorporated in the work and the value thereof at the unit prices set forth in the contract and may include therein an allowance not to exceed ninety percent (90%) of the invoice cost of acceptable materials delivered at the site of the work but not incorporated in the work at the time of making the estimate, subject to the following conditions.

- (a) The materials are delivered and properly stored at the site of work, or
- (b) The materials are delivered to the Contractor or subcontractors and properly stored in acceptable storage places within reasonable distance of the site of work for those specific items of materials as called for in the Special Provisions and
- (c) The Contractor agrees by acceptance of the allowance that the Department shall not be liable for any theft, loss or damage to the material nor shall the Department be liable for any other claims arising from the delivery and storage of the material.

Partial payments shall be made only if the Manager finds that:

- (a) The Contractor has submitted bills of sale for the materials or otherwise demonstrates clear title to such materials.
- (b) The materials are adequately insured against theft, fire, damages, including damages incurred in transportation to the site, and other casualties.
- (c) The materials are not subject to deterioration.

(d) In the case of materials stored off the project site, the materials are not commingled with other materials not to be incorporated into the project.

These estimates shall be approximate only and shall be subject to correction at any time prior to or in the final estimate. The Department shall retain five percent (5%) of the total amount of progress and/or partial payment until after completion of the entire contract in an acceptable manner and the balance, less previous payments, shall be certified and paid to the Contractor, provided further, that after fifty percent (50%) of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further, that if progress is not satisfactory, the Department may continue to withhold as retainage sums not exceeding five percent (5%) of the amount due the Contractor; provided further, that the Department may enter into an agreement with the Contractor which shall allow the Contractor to withdraw from time to time the whole or any portion of the sum retained upon depositing with the Department any government bond that is acceptable to the State with a market value not less than the sum to be withdrawn.

9.7 FINAL PAYMENT

When the work provided for by the contract has been completely performed on the part of the Contractor, all parts of the work have been approved by the Manager, and the final inspection and project acceptance as provided for have been made, the Contractor shall prepare and submit to the Manager the final payment request. The final payment amount, less all previous payments and less any sums that may have been deducted in accordance with the provisions of the contract, shall be paid to the Contractor, provided the Contractor has submitted the items required by Section 8.14.

Sums necessary to meet the claims of the County or any other person, partnership, corporation or other legal entity may be retained from the sums due the Contractor until said claims have been fully and completely discharged or otherwise satisfied.

The filing of willfully false affidavits shall disqualify the Contractor from bidding on future work of the Department.

SECTION 10 - VALUE ENGINEERING INCENTIVE

The following clause is applicable only when the project contract exceeds \$100,000. (Section 103-49, HRS)

- (a) This clause applies to all VECP initiated and developed by the Contractor for changing the drawings, designs, specifications, or other requirements of this contract. This clause does not, however, apply to any VECP unless it is identified as such by the Contractor at the time of its submission to the Engineer.
- (b) All VECP must:
 - 1. Result in a savings to the Department by providing less costly items than those specified herein without impairing any of their essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, desired appearance; and
 - 2. Require, in order to be applied to this contract, a change order to this contract.
- (c) The VECP shall be processed expeditiously and in the same manner as prescribed for any other proposal which would likewise necessitate issuance of a contract change order. As a minimum, the following information shall be submitted by the Contractor with each proposal.
 - 1. A description of the difference between the existing contract requirement and the VECP, and the comparative advantages and disadvantages of each;
 - 2. An itemization of the requirements of the contract which must be changed if the VECP is adopted and a recommendation as to how to make each change.
 - 3. An estimate of the reduction in performance costs that shall result from adopting of the VECP taking into account the costs of implementation by the Contractor, including any amounts attributable to subcontracts and the basis for the estimate;
 - 4. A prediction of any effects of the VECP would have on other costs to the Department, such as Department-furnished property costs, costs of related items, and costs of maintenance and operation;
 - 5. A statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract, noting any effect on the contract time; and

6. The dates of any previous submissions of the VECP, the numbers of any Government contracts under which submitted and the previous actions by the Government, if known.
- (d) The Department shall not be liable for any delays in acting upon, or for any failure to act upon any proposal submitted pursuant to this clause. The decisions of the Manager as to the acceptance of any VECP under this contract shall be final. Unless and until a change order applies to VECP to this contract, the Contractor shall remain obligated to perform in accordance with the terms of the existing contract. The Manager may accept in whole or in part any VECP submitted pursuant to this clause by issuing a change order which shall identify the VECP on which it is based.
- (e) If a VECP submitted to this clause is accepted under this contract, an equitable adjustment in the contract price and in any other affected provisions of this contract shall be made in accordance with this clause and the "Changes" clause of this contract. The equitable adjustment shall first be established by determining the effect on the Contractor's cost of performance, taking into account the Contractor's cost of implementing the change (including any amount attributable to subcontracts). The contract price shall then be reduced by the total estimated decrease in the cost of performance minus fifty percent (50%) of the difference between the amount of such total estimated decrease and any ascertainable costs to the Department which must be incurred to apply the VECP to this contract.
- (f) Cost reduction proposals submitted under the provisions of any other contract also may be submitted under this contract for consideration pursuant to the terms of this clause.
- (g) The Contractor may restrict the Department's right to use any sheet of a VECP or of the supporting data, submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet. "This data furnished pursuant to a value engineering incentive clause shall not be disclosed outside the Department, or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under said clause. This restriction does not limit the Department's right to use information contained in this data if it is or has been obtained from another source, or is otherwise available, without limitations. If such a proposal is accepted by the Department by issuance of a change order under the 'Changes' clause of said contract after the use of this data in such an evaluation, the Department shall have the right to duplicate, use and disclose any data pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and have others so do."

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

SECTION 11 - ENVIRONMENTAL PROTECTION

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

11.1 RUBBISH DISPOSAL

- (a) No burning of debris and/or waste materials shall be permitted on the project site.
- (b) No burying of debris and/or waste material except for materials which are specifically indicated elsewhere in these specifications as suitable for backfill shall be permitted on the project site.
- (c) 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.
- (d) No dry sweeping shall be permitted in cleaning rubbish and fines which can become airborne from floors or other paved areas. Vacuuming, wet mopping or wet or damp sweeping is acceptable.
- (e) Enclosed chutes and/or containers shall be used for conveying debris from above to ground floor level.
- (f) Cleanup shall include the collection of all waste paper and wrapping materials, cans, bottles, construction waste materials and other objectionable materials, and removal as required. Frequency of cleanup shall coincide with rubbish producing events.

11.2 DUST

- (a) Dust shall be kept down at all times, including non-working hours, weekends and holidays, by sprinkling water. For areas planted with ground cover and grass, payment for sprinkling water for dust control shall not apply as soon as planting is initiated and thereafter.

Such sprinkling shall be considered as maintenance, and its cost shall be included in the lump sum bid price exclusive of the Dust Control sprinkling allowance. Work done by the Contractor in complying with this requirement shall be done and paid for in accordance with Subsection 4.2(e) - Force Account Work - and Subsection 9.4(d) - Force Account Work - respectively.

Payment shall be made from an allowance included in the Contractor's bid as provided in the Special Provisions.

- (b) Wet grinding, when required by the Manager in correcting an error made by the Contractor, shall be done at no cost to the Department.
- (c) Wet cutting shall be required for cement masonry blocks, concrete and asphaltic concrete pavements unless attachments are used with dry cutting equipment to capture the dust created thereby.
- (d) No unnecessary shaking of bags shall be permitted where cement, mortar and plaster mixing is done unless the dust therefrom can be confined.
- (e) No dry power brooming shall be allowed in unconfined areas. Vacuuming, wet mopping, wet sweeping, or wet power brooming may be used instead. Air blowing shall be permitted only for cleaning erected forms prior to pouring.

11.3 NOISE

- (a) All internal combustion engine powered equipment shall have mufflers to minimize noise.
- (b) No blasting and use of explosives shall be permitted without prior approval of the Manager.
- (c) Pile driving operations shall be confined to the period between 8:00 a.m. and 5:30 p.m., Monday through Friday. Pile driving shall not be permitted on weekends and legal State and Federal holidays.
- (d) Starting up of non-highway vehicular equipment shall not be done prior to 6:45 a.m. without prior approval of the Manager.

11.4 EROSION

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

11.5 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 pavement. Waste water shall not be discharged into existing streams, waterways, or drainage systems such as gutters and catch basins unless treated to comply with Department of Health water pollution regulations.

- b. Trucks hauling debris shall be covered as required by PUC Regulations. Trucks hauling fine materials shall be covered.
- c. No dumping of waste concrete shall be permitted at the jobsite unless otherwise permitted in the Special Provisions.
- d. Except for rinsing of the hopper and delivery chute, and for wheel washing where required, concrete trucks shall not be cleaned on the jobsite.
- e. Except in an emergency, such as a mechanical breakdown, all vehicle fueling and maintenance shall be done in a designated area. A temporary berm shall be constructed around the area when runoff can cause problems. Oil pans shall be used to prevent seepage.
- f. Spray painting shall not be allowed unless done by the "Airless spray" process.

11.6 SUSPENSION OF WORK

Violation of any of the above requirements or any other pollution control requirements which may be specified in the Technical Specifications of the contract shall be cause for suspension of the work creating such violation. No additional compensation shall be due the Contractor for remedial measures to correct the offense. Also, no extension of time shall be granted for delays caused by such suspensions.

If no corrective action is taken by the Contractor within 72 hours after a suspension in order by the Manager, the Department reserves the right to take whatever action is necessary to correct the situation and to deduct all cost incurred by the Department in taking such action from monies due the Contractor.

The Manager may also suspend any operations which he feels are creating pollution problems although they may not be in violation of the above-mentioned requirements. In this instance, the work shall be done by force accounts as described in Subsection 4.2(e) - Force Account Work - and paid for in accordance with Subsection 9.4(b) - Force Account Work. The count of elapsed working days to be charged against the contract in this situation shall be computed in accordance with Subsection 8.8(d) - Elapsed Working Days.

APPENDIX A

(NAME OF CORPORATION)

I, _____, Secretary of _____

_____ Corporation, a _____ corporation,

do hereby certify that the following is a full, true and correct copy of a resolution duly adopted by the Board of Directors of said Corporation, at its meeting duly called and held at the office of the Corporation, _____

_____ Street, _____ on the _____

day of _____, 19___, at which a quorum was present and acting

throughout; and that said resolution has not been modified, amended or

rescinded and continues in full force and effect:

"RESOLVED that any individual at the time holding the position of President or Vice President, be, and each of them hereby is, authorized to execute on behalf of the Corporation any bid, proposal or contract for the sale or rental of the products of the Corporation or for services to be performed by the Corporation, and to execute any bond required by any such bid, proposal or contract with the United States Government or the State of Hawaii or the County of Hawaii or any County or Municipal Department of said State, or any department or subdivision of any of them."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the
corporate seal of said _____ Corporation
this _____ day of _____, 19__.

Secretary

(Names and Addresses of:)

President

Vice President

Secretary

Treasurer

CONTRACT

THIS AGREEMENT made and entered into this day of, A.D. 19....., by and between the WATER COMMISSION of the County of Hawaii, by its Chairman, party of the first part, and party of the second part,

WITNESSETH:

That for and in consideration of the payments hereinafter mentioned, the party of the second part hereby covenants and agrees to and with the party of the first part to

in accordance with plans, Job No., on file in the office of the Manager, Department of Water Supply, proposal and special provisions hereto annexed, detail and standard specifications, and general conditions (bound separately), which plans, proposal, specifications and general conditions, including any and all additions thereto or deductions therefrom are hereby made a part hereof, and to complete the same on or within consecutive calendar days from formal notification to proceed by letter, or on or before such later date as may be fixed in accordance with said specifications. The additions or extras under this contract shall not exceed the sum of

..... Dollars (\$

For and in consideration of the covenants, undertakings and agreements of the party of the second part here-in set forth and upon the full and faithful performance thereof by the party of the second part and/or legal representatives, the party of the first part hereby agrees to pay to the party of the second part and/or legal representatives, the sum of

..... Dollars (\$

in lawful money of the United States of America, such payments to be made, however, in the manner and at times provided in the specifications and general conditions hereinabove mentioned and made a part hereof, and subject to such additions thereto or deductions therefrom heretofore or hereafter made in accordance with the provisions of such specifications, general conditions and this agreement.

IN WITNESS WHEREOF, the party of the first part has caused this agreement to be executed in its behalf by its Chairman, at Hilo, Hawaii, County and State of Hawaii, and the party of the second part has caused this agreement to be executed at , Hawaii, State of Hawaii, on the day and year first above written.

WATER COMMISSION OF THE COUNTY OF HAWAII

By Chairman

..... Contractor

By

(Acknowledgment)

<p>APPROVED AS TO FORM AND LEGALITY</p> <hr/> <p>CORPORATION COUNSEL COUNTY OF HAWAII</p> <p>DATE: _____</p>

A P P E N D I X B

BOND

KNOW ALL MEN BY THESE PRESENTS, THAT
..... of
..... as principal, and

as surety, are held and firmly bound unto the Water Commission of the County of Hawaii, its successors or assigns, in the full and just sum of Dollars (\$),

in lawful money of the United States of America, for the payments of which to the said Water Commission of the County of Hawaii, its successors or assigns, well and truly to be made, said principal and said surety do hereby bind themselves and their respective heirs, executors and administrators and successors or assigns, jointly and severally firmly by these presents.

IN WITNESS WHEREOF, said principal has caused this instruments to be executed by its proper officers at Hawaii, this day of A.D. 19....., and said surety has caused this instrument to be executed by its/their proper officers at Hawaii, this day of A.D. 19.....

This condition of this obligation is such that if the above bounden principal, shall fully and faithfully perform and fulfill all the requirements and stipulations contained and set forth in and by contract dated 19....., entered into by said principal, with the Water Comission of the County of Hawaii for

all in accordance with plans for said project, Job No....., on file in the office of the Manager, Department of Water Supply, conforming in all respects to the stipulations, covenants and conditions of said contract as it now exists or may be modified according to its terms, and shall promptly pay all just claims for labor and material used in the prosecution of the work provided for in the aforesaid contract; and shall deliver the said work to the said Department of Water Supply of the County of Hawaii or to its successors or assigns fully completed as in said agreement specified free from all liens and claims and without further cost, expense or charge to the said Department of Water Supply of the County of Hawaii, its successors or assigns, than is agreed to or provided for in said agreement, and shall save the said Department of Water Supply of the County of Hawaii, its officers or agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the said principal, or legal representatives, agents or servants or the improper performance of the said work by said principal...or from any other cause, then this obligation shall be void; otherwise, it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that no change, extension, alteration, deduction or addition in or to the terms of the said contract including the plans or specifications, permitted by said contract, shall in anywise affect the obligation of said principal and surety on this bond.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said contract as liquidated damages shall be considered as and held to be fixed and liquidated damages to be forfeited to the Water Commission of the County of Hawaii, its successors or assigns, in the event of a breach of any or all or any part of the covenants, conditions, stipulations, or promises contained in said contract and this obligation, in accordance with the terms thereof; that the right of action contemplated under and by provisions of Sec. 507-17, Hawaii Revised Statutes, shall inure to the benefit of any and all persons entitled to file claims for labor and materials furnished said contractor.

Principal
.....
Surety
.....

A P P E N D I X C

VALUE ENGINEERING CHANGE PROPOSAL
(Contractor Required Information)

From: _____ Date: _____
 To: Manager, Department of Water Supply VECP No.: _____
 Project: _____ Contract No.: _____
 Location: _____

INFORMATION REQUIRED OF THE CONTRACTOR (If answer to any of the following questions is "Yes," explain in Remarks below.)

	YES	NO
1. Does this proposed change affect the time of completion of the contract as stated in the Contract Documents		
2. Has the Contractor submitted this proposed change previously to this office or any other Government agency?		
3. Does this change affect other costs to the Department, such as Department-furnished property or costs of contract-related items?		
4. Does this proposed change increase the maintenance or operation costs of original or proposed items?		
5. Is a subcontractor involved in this proposed change to the original contract?		
6. Does the Contractor intend to restrict the Department's right to use any data described in this proposed change?		
7. Does this proposed change involve use of proprietary materials?		

CHANGES AND/OR REVISIONS TO DRAWINGS AND SPECIFICATIONS (Attach applicable contract drawings and specifications, including Contractor's or shop drawings or literature with all changes marked on the drawings and specifications.)

REMARKS:

Rec'd by Department:	Department Representative:	Contractor's Representative:
	(s)	(s)

VALUE ENGINEERING CHANGE PROPOSAL
(Contractor Summary Submittal)

From: _____ Date: _____
 To: Manager, Department of Water Supply VECP No.: _____
 Project: _____ Contract No.: _____
 Location: _____

SUMMARY OF CHANGE (Description - Compare advantages and disadvantages)

ESTIMATED COST SUMMARY (Costs shall be estimated in accordance with the change provisions contained in the General Requirements and Covenants of the contract. Attach Cost Estimating Form, for detailed estimate whenever applicable.)

	Unit Pr.	Quan.	Total
A. Original.....	_____	_____	_____
B. Proposed.....	_____	_____	_____
C. Gross Savings (A-B).....			_____
D. Contractor's Implementing Cost....			_____
E. Total Estimated Decrease (C-D)....			_____
F. State's Implementing Cost.....		_____	
G. Difference (E-F).....		_____	
H. 1/2 Difference ($\frac{E+F}{2}$).....			_____
I. Reduction in Contract Price (E-H).			_____

DATE BY WHICH A CHANGE ORDER MUST BE ISSUED
SO AS TO OBTAIN MAXIMUM COST REDUCTION. _____

Rec'd by Department:	Department Representative:	Contractor's Representative:
	(s)	(s)

DEPARTMENT OF WATER SUPPLY
COUNTY OF HAWAII

CHANGE ORDER

Contractor

Job No.

Order No.

Contract

Date

Work is to be performed in accordance with the Specifications, Plans and special provisions pertaining same.

Note here as specifically as possible the item, quantity, and location of the work required, with an accurate description of its character, using sketches if necessary. Also note any quantities or work which this replaces and show net value or quantity of extra, or deduction.

1—Recommended

.....
Project Engineer or Inspector

3—Noted with Approval

.....
Manager

2—Approved

.....
Chairman Department of Water Supply

4—Accepted

.....
Contractor or his Representative.

BIDDER

PROPOSAL FOR
DEPARTMENT OF WATER SUPPLY
COUNTY OF HAWAII

BIDDER must use this envelope
in submitting tender.

A P P E N D I X D

NON-GRATUITY AFFIDAVIT

(A release form to be executed and filed by
the contractor before final payment is made.)

COUNTY OF HAWAII)

Contractor _____

STATE OF HAWAII)

SS:

Contract No. _____

Job No. _____

The undersigned hereby certifies that he is the _____

(title)

of _____ that in connection with
(name of partnership or corporation)

the above contract/project, he or its officers, representatives, agents, subcontractors or employees have not given or made any agreement to give any County of Hawaii employee, the employee's relatives or agents any gift of money or otherwise, or anything of value; has not rented or purchase any equipment or supplies of any nature whatsoever from any County of Hawaii employee, the employee's relatives or agents.

Subscribed and sworn to before me
this _____ day of _____, 19____.

Notary Public, Third Judicial Circuit,
State of Hawaii

My commission expires: _____