

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
AIRPORTS DIVISION

SPECIAL PROVISIONS, SPECIFICATIONS AND PROPOSAL

FOR

LOT J: ELECTRICAL VAULT REPAIRS

HONOLULU INTERNATIONAL AIRPORT  
HONOLULU, OAHU, HAWAII

STATE PROJECT NO. HNL-2017-OME-04

February 2017

## TABLE OF CONTENTS

|  |                       |
|--|-----------------------|
| Notice to Bidders .....  | NTB-1 to NTB-2        |
| Instruction for Contractor's Licensing                                 |                       |
| Special Provisions .....   | SP-1 - SP-39          |
| Supplement to the Special Provisions .....                             | SSP-1                 |
| Airports Division Supplement to Special Provisions .....               | ADS-1 - ADS-29        |
| WAGE RATE SCHEDULE (Not physically included in the Bid Documents)      |                       |
| PART I – GENERAL PROVISIONS (Not Physically Included in Bid Documents) |                       |
| PART II – TECHNICAL PROVISIONS   |                       |
| <u>DIVISION 1 – GENERAL REQUIREMENTS</u>                               |                       |
| SECTION 01 00 00 – GENERAL REQUIREMENTS.....                           | 010000-1 to 010000-3  |
| SECTION 01 30 00 – SUBMITTALS .....                                    | 013000-1 to 013000-09 |
| <u>PROJECT PLANS</u>   |                       |
| <b>PROPOSAL</b> .....  | PF-1 to PF-6          |
| PROPOSAL SCHEDULE .....  | PF-7 to PF-8          |
| <b>FORMS</b>   |                       |
| SURETY PERFORMANCE BOND  |                       |
| WAGES AND HOURS OF EMPLOYEES ON PUBLIC WORKS LAW                       |                       |
| CAHAPTER 104 HRS COMPLIANCE CERT                                       |                       |
| CERTIFICATION OF COMPLIANCE WITH ACT 68, SLH 2010                      |                       |

CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT

## **INSTRUCTIONS FOR CONTRACTOR'S LICENSING**

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

## **INSTRUCTIONS FOR CONTRACTOR'S LICENSING**

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

STATE OF HAWAII

DEPARTMENT OF TRANSPORTATION

**SPECIAL PROVISIONS**

## SPECIAL PROVISIONS

- I. **GENERAL PROVISIONS** - The General Provisions applicable to this project are not physically included herein, but are included by reference. The General Provisions for the State of Hawaii, Department of Transportation, Harbors Division's or Airports Division's, construction projects are contained in a pamphlet entitled "GENERAL PROVISIONS FOR CONSTRUCTION PROJECTS", dated 1977, hereinafter referred to as the "General Provisions". Copies of the "General Provisions" may be obtained at a cost of \$1.00 a copy from the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813, or from any office where plans and specifications for the project may be obtained, as indicated in the Notice to Bidders.

The Special Provisions and the Technical Provisions contained herein and the "General Provisions" shall be read by the Contractor as they form a part of the agreement to be entered into between the Contractor and the State of Hawaii.

- II. The "General Provisions" are amended as follows:

- A. **ARTICLE I - DEFINITIONS AND TERMS** is amended as follows:

1. Section 1.1 Abbreviation add the following:  
"H.A.R. - Hawaii Administrative Rules  
DOTAX - Department of Taxation"

- B. **ARTICLE II - PROPOSAL REQUIREMENTS AND CONDITIONS**

1. Section 2.1 Contractor's License - The second (2nd) paragraph is deleted in its entirety and the following substituted therefore:

"If a contractor's license is required by law for the performance of the work which is called for in this bid, the bidder and all subcontractors must have the required license before the submission of the bidder's proposal in the case of a non-federal aid project, and for federal-aid projects, the bidder must have the required license prior to the award of the project and all subcontractors prior to the start of the subcontracted work."

2. Section 2.2 Qualification of Bidders is amended to read as follows:

"In accordance with Section 103D-310, H.R.S., the Department may require any prospective bidder to submit answers to questions contained in the "Standard Qualification Questionnaire for Prospective Bidders on Public Works Contracts" on the form furnished by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment. Whenever it appears to the Department, from answers to the questionnaire or otherwise, that the bidder is not fully qualified and able to perform the intended work, the Department will, 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 consider any bid offered by the bidder. All information contained in the answers to the questionnaire shall be kept confidential. Questionnaire so submitted shall be returned to the bidders after serving their purpose.

Failure to complete the qualification questionnaire will be sufficient cause

for the Department to disqualify a prospective bidder.

No person, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm, or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in payments owed to the State of Hawaii or its political subdivisions or is in default as a surety or failure to do faithfully and diligently previous contracts with the State.”

3. Section 2.8 Irregular Proposals is amended by adding the following after item (3):

“(4) If in the opinion of the Director, the bidder and its listed subcontractors do not have the contractor’s licenses or combination of contractor’s licenses necessary to complete all of the work.”

4. Section 2.9 Proposal Guaranty is amended to read as follows:

“The Department will not consider a proposal of \$25,000.00 or more unless accompanied by:

- (a) a deposit of legal tender; or
- (b) a valid surety bid bond, underwritten by a company licensed to issue bonds in the State of Hawaii, in the form and composed, substantially, with the same language as provided herewith and signed by both parties; or
- (c) a certificate of deposit, share certificate, cashier’s check, treasurer’s check, teller’s check, or official check drawn by, or a certified check accepted by and payable on demand to the State by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA).

(1) The bidder may use these instruments only to a maximum of one hundred thousand dollars (\$100,000.00).

(2) If the required security or bond amount totals over one hundred thousand dollars (\$100,000.00), more than one instrument not exceeding one hundred thousand dollars (\$100,000.00) each and issued by different financial institutions shall be acceptable.

(3) The instrument shall be made payable at sight to the Department of Transportation, State of Hawaii.

According to Section 103D-323, H.R.S., the above shall be in a sum not less than five percent (5%) of the amount bid.

5. Section 2.13 Disqualification of Bidders is amended by adding the following:

“(3) Evidence of assistance from a person who has been an employee of the agency within the preceding two years and who participated while in State office or employment in the matter with which the contract is directly concerned, pursuant to Section 84-15, H.R.S.”.



Items numbered (3) and (4) shall be renumbered (4) and (5), respectively.

6. Section 2.14 Declaration of State Employment is deleted in its entirety.

7. Add the following Sections:

(a) “2.16 Preferences -

(A) Preference for Hawaii Products –

1. In accordance with ACT 175, SLH 2009, the Hawaii products preference is applicable to this solicitation.

Qualified Hawaii Products (HP), which may be used in the performance of this project, will be designated in the proposal. A bidder offering a qualified HP shall identify the HP on said proposal page(s).

If a bidder intends to claim preference for a product(s) on the Hawaii Product List and such is not listed in the proposal, the bidder shall immediately notify the Contracts Office, Department of Transportation, so the Engineer may take corrective or other appropriate actions.

Any person desiring a Hawaii product preference shall have the product(s) certified and qualified prior to the deadline for receipt of offer(s) specified in the procurement notice and solicitation.

Any persons desiring to qualify their product(s) shall complete form SPO-38, *Certification for Hawaii Product Preference* and submit to the Department of Transportation, Contracts Office, 869 Punchbowl Street, Honolulu, Hawaii 96813, 14 calendar days prior to bid opening and shall provide all additional information required by the Procurement Officer. For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed). Form SPO-38 is available on the SPO webpage at <http://hawaii.go/spo> under ‘Quicklinks’ menu; click on ‘Forms for Vendors, Contractors, and Service Providers’.

When a solicitation contains both HP and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price offered for a HP item shall be decreased by subtracting 10% for the class I or 15% for the class II HP items offered, respectively. The lowest total, taking the preference into consideration shall be awarded the contract unless the offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of the preference.

2. Change in Availability of Hawaii Product. In the event of any change that materially alters the bidder’s ability to supply Hawaii products, the bidder shall immediately notify the procurement officer in writing and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.

This subsection shall not apply when its application will disqualify the State from receiving federal funds or aid.”

(B) Preference for Recycled Products -

A preference of at least five percent (5%) of the bid amount shall be given to bidders for recycled products when specified in the bid document. The Engineer will use this preference along with any other preferences to determine the lowest responsible and responsive bidder.

Any bidder desiring a preference pursuant to Section 103D-1005, H.R.S., shall certify the recycle content of the products offered on forms furnished in the bid document when submitting a bid. The bidders shall indicate on the certification form, the recycled content of the products offered. Recycled content shall be expressed as a percentage of the total product weight. Bidders shall submit with the certification form sufficient information to support the stated recycled content of the products offered. For purposes of this section, sufficient information shall include manufacturer's specifications or manufacturer's certification. The Contracting Officer calling for bids may request additional information deemed necessary in order to qualify a product. The Contracting Officer calling for bids shall have sole discretion in determining acceptance of a product.

The recycled product preference shall apply only when specifically stated in the bid document.

(C) Preference for APPRENTICESHIP PROGRAMS

In accordance with ACT 17, SLH 2009 – Apprenticeship Program, a 5% bid adjustment for bidders that are parties to apprenticeship agreements pursuant to Hawaii Revised Statutes ( HRS) Section 103-55.6 may be applied to the bidder's price for evaluation purposes. These procedures apply to public works projects with estimated cost of \$250,000 or more and entered into under the provisions of HRS Chapter 103.

The following provisions apply to this Apprenticeship Program.

1. Definitions

A. “Apprenticeable trade”,HRS section 103-55.6 (c), shall have the same meaning as ‘apprenticeable occupation’ pursuant to Hawaii Administrative Rules ( HAR) section 30-1-5.

B. “Department” means the Department of Labor and Industrial Relations.

C. “Director” means the Director of Labor and Industrial Relations.

D. “Employ” means the employment of a person in an employer-employee relations.

E. “Governmental body” means as defined in HRS section 103D-104.

F. “Party to an apprenticeship agreement” means party to a registered apprenticeship program with the department of labor and industrial relations.

G. "Preference" means the 5% by which the qualified bidder's offer amount would be decreased for evaluation purposes.

H. "Public work" shall be as defined in HRS section 104-2 and HAR section 12-22-1

I. "Registered apprenticeship program" means a construction trade program approved by the department pursuant to HAR section 12-30-1 and section 12-30-4.

J. "Sponsor" means an operator of an apprenticeship program and in whose name the program is approved and registered with the department of labor and industrial relations pursuant to HAR section 12-30-1.

K. Offeror – Entity/bidder submitting a proposal to undertake a project.

L. Procurement Officer – Director of Transportation or his authorized representative.

## 2. Qualification Procedures

A. Any bidder seeking the preference must be a party to an apprenticeship agreement registered with the department at the time the offer is made for each apprenticeable trade the bidder will employ to construct the public works projects for which the offer is being made.

- (1) The apprenticeship agreement shall be registered and conform to the requirements of HRS chapter 372.
- (2) Subcontractors do not have to be a party to an apprenticeship agreement for the bidder to obtain the preference.
- (3) The bidder is not required to have apprentices in its employ at the time of submittal of an offer to qualify for the preference.

B. The department shall:

- (1) Develop and maintain a list of construction trades in registered apprenticeship programs which conform to HRS chapter 372; and
- (2) Electronically post the list; including any amendments, on the department website (<http://hawaii.gov/labor/wdd>).

C. Bidder is responsible to comply with all submission requirements for registration of its apprenticeship program before requesting a preference.

D. Bidder shall provide a certification by the sponsor of the respective registered apprenticeship programs covering the relevant trade(s) for the public works project.

E. *Certification Form 1* issued by the department shall include:

- (1) Contractor information;
- (2) Solicitation reference;

- (3) Trade(s);
- (4) Date and name of apprenticeship program;
- (5) Signature of authorized training coordinator or training trust fund administrator certifying that the contractor is a participant in the program, and that the program is registered with the department;
- (6) Contract information for sponsor's authorized representative signing the form;
- (7) Number of apprentices enrolled in the program, number who successfully completed the apprenticeship program in the past 12 months, including whether the contractor is signatory to a collective bargaining agreement for that trade, or if not, provide for attachment of a copy of the agreement between the contractor and the program.

### 3. Solicitation Procedures

A. If the notice to bidders indicates that this project is covered by this preference, and the offer is less than \$250,000 this preference will still be applicable in determining the lowest bidder.

B. A claim for this preference must include the following:

- (1) Allow bidder seeking to claim the preference to state the trades the bidder will employ to perform the work;
- (2) For each trade to be employed to perform the work, the bidder shall submit a completed signed original *Certification Form 1* verifying participation in an apprenticeship program registered with the department.
- (3) The *Certification Form 1* shall be authorized by an apprenticeship sponsor of the department's list of registered apprenticeship programs. The authorization shall be an original signature by an authorized official of the apprenticeship sponsor; and
- (4) The completed *Certification Form 1* for each trade must be submitted by the bidder with the offer. Previous certifications shall not apply unless allowed by the solicitation.

C. Upon receiving *Certification Form 1*, the procurement officer will verify with the department that the apprenticeship program is on the list of apprenticeship programs registered with the department. If the programs are not confirmed by the department, the bidder will not qualify for the preference.

### 4. Evaluation Procedures

A. If the bidder certifies participation in an apprenticeship program for each trade which will be employed by the bidder for the project, the procurement officer shall apply the preference and decrease the bidder's total bid amount by five per cent (5%) for evaluation purposes.

B. Should the bidder qualify for other statutory preferences (for example, Hawaii products), all applicable preferences shall be applied to the bidder's price

C. The contract amount shall be the original offer amount, exclusive

of any preference; the preference is only for evaluation purposes.

D. Any claims challenging a bidder's representation that the bidder is a participant in an apprenticeship program(s) as claimed, shall be submitted to the procurement officer. The procurement officer will refer the challenge to the department of labor and industrial relations who shall investigate any such claims and shall make a determination.

## 5. Contract Administration

A. For the duration of a contract awarded utilizing the apprenticeship preference, the contractor shall certify each month that work is being conducted on the project, that it continues to be a participant in the relevant apprenticeship program for each trade it employs.

B. Monthly certification shall be made on *Monthly Certification Form 2* prepared and made available by the department, be a signed original by the respective apprenticeship program sponsors authorized official, and submitted by the contractor with its monthly payment requests.

C. Should the contractor fail or refuse to submit its monthly certification forms, or at any time during the construction of the project, cease to be a part to a registered apprenticeship agreement for each apprenticeable trades the contractor employs, or will employ, the contractor will be subject to the following sanctions:

- (1) Withholding of the requested payment until the required form(s) are submitted;
- (2) Temporary or permanent cessation of work on the project , without recourse to breach of contract claims by the contractor; provided the agency shall be entitled to restitution for nonperformance or liquidated damages claims; or
- (3) Proceed to debar or suspend pursuant to HRS section 103D-702.

D. If events such as “acts of God,” acts of a public enemy, acts of the State or any other governmental body in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the contractor from submitting the certification forms, the contractor shall not be penalized as provided herein, provided the contractor completely and expeditiously complies with the certification process when the event is over.

This subsection shall not apply when its application will disqualify the State from receiving federal funds or aid.”

(D) Evaluation Procedures and Contract Award - For bid evaluation, the Engineer will evaluate the bids by applying the applicable preferences selected by the bidders according to the contract. The Engineer will base the calculations for adjustments upon the original bid prices offered. If more than one preference applies, the evaluated bid price shall be the sum of the original bid price plus applicable preference adjustments.

The Engineer will award the contract to the responsible bidder submitting the responsive bid with the lowest evaluated bid price. The contract amount of the contract awarded shall be the original bid price offered exclusive of any preference.”

- (b) “2.17 Certification for Safety and Health Program for Bids in excess of \$100,000. - In accordance with Section 103D-327 and 396-18 H.R.S., the bidder or offeror, by signing and submitting this proposal, certifies that a written safety and health plan for this project will be available and implemented by the notice to proceed date for this project. Details of the requirements of this plan may be obtained from said Statute or the Department of Labor and Industrial Relations, Occupational Safety and Health Division (HIOSH)”.

### **C. ARTICLE III - AWARD AND EXECUTION OF CONTRACT**

1. Section 3.2 Award of Contract is deleted in its entirety and the following substituted therefore:

“The award of contract, if it be awarded, will be made within 60 calendar days after the opening of bids, to the lowest responsible bidder whose proposal complies with all the requirements. The successful bidder will be notified by letter, mailed to the address shown in its proposal, that its proposal has been accepted, and that it has been awarded the contract.

**Requirement for award.** To be eligible for award, the apparent low bidder will be contacted to submit copies of the documents listed below to demonstrate compliance with Section 103D-310(c), HRS. The documents should be submitted to the Department as soon as possible. If a valid certificate/clearance is not submitted on a timely basis for award of a contract, a bidder otherwise responsive and responsible may not receive the award.

#### **A. Tax Clearance.**

Pursuant to §103D-310(c), 103-53 and 103D-328, HRS, the successful bidder shall be required to submit a certified copy of its tax clearance issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS) to demonstrate its compliance with Chapter 237, HRS. A tax clearance is valid for six (6) months from the most recent approval stamp date on the tax clearance and must be valid on the bid’s first legal advertisement date or any date thereafter up to the bid opening date.

FORM A6, TAX CLEARANCE CERTIFICATE, is available at the following website:

<http://www.hawaii.gov/tax/>

To receive DOTAX Forms by fax or mail, phone (808)587-7572 or 1-800-222-7572.

The application for the Tax Clearance Certificate is the responsibility of the bidder, and must be submitted directly to the DOTAX or IRS. The approved certificate may then be submitted to

the Department.

**B. DLIR Certificate of Compliance.**

Pursuant to §103D-310(c), HRS, the successful bidder shall be required to submit a copy (faxed copies are acceptable) of its approved Certificate of Compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR) to demonstrate its compliance with unemployment insurance (Chapter 383, HRS), workers' compensation (Chapter 386, HRS), temporary disability insurance (Chapter 392, HRS), and prepaid health care (Chapter 393, HRS). The certificate is valid for six (6) months from the most recent approval stamp date on the certificate and must be valid on the bid's first legal advertisement date or any date thereafter up to the bid opening date. For certificates which receive a "pending" approval stamp, a DLIR approval stamp is required prior to the issuance of the Notice to Proceed.

FORM LIR#27, APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR, is available at the following website:

[www.hawaii.gov/labor](http://www.hawaii.gov/labor)

More information is available by calling the DLIR Unemployment Insurance Division at (808) 586-8926.

Inquiries regarding the status of a LIR#27 Form may be made by calling the DLIR Disability Compensation Division at (808)586-9200.

The application for the Certificate of Compliance is the responsibility of the bidder, and must be submitted directly to the DLIR. The approved certificate may then be submitted to the Department.

**C. DCCA Certificate of Good Standing.**

Pursuant to §103D-310(c), HRS, the successful bidder shall be required to submit a copy (faxed copies are acceptable) of its approved Certificate of Good Standing issued by the Hawaii State Department of Commerce and Consumer Affairs (DCCA), Business Registration Division (BREG) to demonstrate that it is either:

incorporated or organized under the laws of the State; or

registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

A Certificate of Good Standing is valid for six (6) months from the approval date on the certificate and must be valid on the bid's first legal advertisement date or any date thereafter up to the bid opening date. A Hawaii business that is a sole proprietorship, is not required to register with the BREG, and therefore not required to submit a Certificate of Good Standing. Bidders are advised that there are

costs associated with registering and obtaining a Certificate of Good Standing from the DCCA.

To purchase a CERTIFICATE OF GOOD STANDING, go to On-Line Services at the following website:

[www.hawaii.gov/dcca/](http://www.hawaii.gov/dcca/)

The application for the Certificate of Good Standing is the responsibility of the bidder, and must be submitted directly to the DCCA. The approved certificate may then be submitted to the Department.

2. Section 3.4 Return of Proposal Guaranty is amended by inserting the following between the ending of the second (2nd) line and the beginning of the third (3rd) line:

“proposals. The . . .”

3. Section 3.5 Requirements of Contract Bond is amended to read as follows:

“At the time of execution of the contract, the successful bidder shall file a good and sufficient performance bond and payment bond on the forms furnished by the Department (see attached) conditioned for the full and faithful performance of the contract according to the terms and intent thereof and for the prompt payment to all others for all labor and material furnished by them to the bidder and used in the prosecution of the work provided for in the contract. The bonds, each of which shall be in an amount equal to one hundred percent (100%) of the amount of the contract price plus amounts estimated to be required for extra work. The bidder shall limit the acceptable performance and payment bonds to the following:

- (a) Legal tender; or
- (b) Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii; or
- (c) A certificate of deposit; share certificate; cashier’s check; treasurer’s check; teller’s check drawn by or a certified check accepted by and payable on demand to the State by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA).

1. The bidder may use these instruments only to a maximum of one hundred thousand dollars (\$100,000.00).
2. If the required security or bond amount totals over one hundred thousand dollars (\$100,000.00), more than one instrument not exceeding one hundred thousand dollars (\$100,000.00) each and issued by different financial institutions shall be acceptable.

Such bonds shall also by the terms inure to the benefit of any and all persons entitled to file claims for labor done or material furnished in the work so as to give them a right of action as



contemplated by Section 103D-324, H.R.S.”

4. Section 3.6 Execution of Contract is amended by revising the first paragraph to read as follows:

“The contract, bond and “Chapter 104, HRS Compliance Certificate”, similar to a copy of the same annexed hereto, shall be executed by the successful bidder and returned within ten (10) days after the award of the contract or within such further time as the Director may allow after the bidder has received the contract for execution.”

#### **D. ARTICLE IV - SCOPE OF WORK**

1. Section 4.1 Intent of Contract is amended by adding the following:

“Voluntary Partnering. The Department intends to encourage the foundation of cohesive partnership with the Contractor and its principal subcontractors and suppliers. Each organization will structure this partnership to draw on the strengths and to identify and achieve reciprocal goals. The objectives are effective and efficient contract performance and completion within budget, on schedule, and according to the contract.

Voluntary partnering shall apply to projects with a construction cost estimated at over one million dollars (\$1,000,000.00), except for resurfacing projects.

This partnership will be bilateral in makeup and participation will be voluntary. Both parties will agree and share equally the costs associated with effectuating this partnering.

The Contractor’s management personnel and the appropriate Airports or Harbors Division’s Construction Section will initiate partnering before the start of work and before the preconstruction conference. They will initiate a partnering development seminar/team building workshop. The Department’s Construction Engineer and the Contractor’s authorized representative will be the coordinators in determining attendees, agenda, location, and duration of the workshop.

Persons attending the seminar/workshop will be the Department’s and the Contractor’s Project Site Engineers, other key on-site project personnel, senior management level personnel and authorized representatives of subcontractors and suppliers. Other attendees, as applicable to the project, include key personnel from:

- (1) Design Consultants and subconsultants,
- (2) Other Division representatives such as:
  - (a) Design
  - (b) Planning
  - (c) Maintenance
  - (d) District Personnel
- (3) Other State Departments or Agencies such as:
  - (a) Health
  - (b) Land & Natural Resources
  - (c) Disabilities Communication Access Board (DCAB)

- (4) County Departments or Agencies such as:
  - (a) Public Works
  - (b) Transportation Services
  - (c) Wastewater Management
  
- (5) Federal Agencies such as:
  - (a) Federal Aviation Administration (FAA)
  - (b) Federal Highway Administration (FHWA)
  - (c) Corps of Engineer
  - (d) Environmental Protection Agency (EPA)
  
- (6) Utility Companies such as:
  - (a) Hawaiian Electric Company (HECO)
  - (b) Hawaiian Telephone Company (HTCO)
  - (c) GASCO
  - (d) Signal Corps
  - (e) Oceanic Cable TV

The Contractor's authorized representative and the Department's Construction Engineer may hold follow-up workshops periodically throughout the duration of the contract.

Establishment of a partnership charter on a project will not change the legal relationship of the parties to the contract nor relieve either party from the terms of the contract.”

2. Section 4.2 Alterations shall be replaced with the following:

“4.2 ALTERATIONS – The State reserves the right to order, at any time during the progress of the work, alterations involving increases or decreases in the quantity of any contract item and alterations in the details of construction as may be found necessary or desirable. The ordering of alterations shall not invalidate the contract or release the surety, and the contractor shall comply with any such order, as though it has been a part of the original contract. Alterations in the details of construction shall not involve or require work beyond the original proposed construction unless a change order is issued to that effect.

Unless ordered changes increase or decrease the quantity of a *contract item* more than fifteen (15) per cent, the work shall be performed as a part of the contract and paid for at the unit bid prices.

Changes in natural or any other conditions in the items of excavation shall not be considered an alteration, increase or decrease within the meaning of this Section.

An alteration in the type of the work which involves work different in kind or nature from any item involved or called for in the original contract shall be treated as extra work and the provisions of Section 4.3 shall apply.

The provisions of this Section shall not apply to overruns and underruns on items which are estimated in the proposal.

No claim shall be made by the Contractor for any loss of anticipated profits because of any such alteration, or by reason of any variation between the approximate quantities and the quantities of work as done.

Payment for alterations will be made in accordance with the provisions of Section 9.3. If the alteration is of sufficient magnitude as to require additional time in which to complete the project, adjustment will be made in accordance with the provisions of Section 8.7.

- A. Increased or Decreased Quantities – Except for lump sum items which are covered in Subsection 4.2(B), in the event the Contractor is ordered to make alterations involving an increase or decrease in the quantity of any contract item, or to omit portions of the work, no adjustment will be made in the unit price for any increase or decrease in the cost of any given contract item unless the quantity of such item is increased or decreased more than fifteen (15) per cent.

If an alteration is ordered which, together with previous orders or agreed changes in quantity, increases or decreases the quantity of a contract item more than fifteen (15) per cent of the approximate quantity shown in the proposal schedule, an adjustment will be made. Such adjustment for an item, the quantity of which has been increased, will be based on the decreased actual cost per unit of said item to the Contractor and shall apply only to the increase in excess of one hundred fifteen (115) per cent of the approximate quantity shown in the proposal schedule.

For decreased quantities, the adjustment in unit price shall be such that the total payment for the contract item shall not exceed eighty-five (85) per cent of the original bid amount of said contract item.

- B. Lump Sum Items – Should the Contractor be directed to make changes involving an increase or decrease in the quantity of any specified lump sum item or portion of the lump sum work or to omit portions of the lump sum work, adjustment in payment will be made only for items of work affected.

When the increase or decrease does not exceed fifteen (15) per cent of the original specified quantity, the adjustment in lump sum price will be based on a theoretical unit price. The theoretical unit price will be determined by dividing the original contract lump sum for the item of work by the originally specified quantity for that item of work.

The increase or decrease in the original lump sum price, as the case may be, shall be the product of the theoretical unit price and the quantity involved not exceeding fifteen (15) per cent of the original specified quantity for the item of work.

When the increase exceeds fifteen (15) per cent of the originally specified quantity, the adjustment in payment for the quantity in excess of fifteen (15) per cent shall be mutually agreed to by the Contractor and the Director, and in the event of failure to agree, any such increased work shall be paid for on a

force account basis in accordance with the provisions of Section 9.4.

When the decrease exceeds fifteen (15) per cent of the originally specified quantity, all reduction in the originally specified lump sum price will be based on the theoretical unit price, or the reduction up to fifteen (15) per cent will be based on the theoretical unit price, and the reduction in excess of the stated percentage shall be computed as if the work involved was performed on a force account basis in accordance with the provisions of Section 9.4, or as mutually agreed to by the Contractor and the Director.

When the quantity of any lump sum item of work is not specified, the adjustment in lump sum price will be determined by the Director in the same manner as if the increase or decrease were to be paid for on a force account basis in accordance with the provisions of Section 9.4, or as mutually agreed to by the Contractor and the Director.

C. Differing Site Conditions - If the Contractor finds the following:

- (1) Subsurface or latent physical conditions that differ materially from that shown on the contract, or
- (2) other physical conditions that are unusual in nature and differ materially from that ordinarily encountered in the type of project under contract, or
- (3) other physical conditions that were not discoverable by the Contractor before commencement of the project or that portion of the project work, or
- (4) other physical conditions that are not generally recognized in the construction industry as inherent in the type of work specified in the project contract.

The Contractor shall immediately notify the Engineer verbally of the above discovery. Within twenty-four (24) hours, the Contractor shall inform the Engineer in writing of the above discovery. The affected work will stop immediately until the Engineer informs the Contractor to commence work in writing.

The Engineer will investigate, document and evaluate the site conditions found in the affected project area. The Engineer will determine and inform the Contractor if such conditions are materially different from the contract and if such conditions justify an adjustment to the project contract.

If an adjustment is warranted and causes an increase in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not it changed as a result of such conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined according to Section 4.6 - Price Adjustment.

The Department will not compensate the Contractor for loss of anticipated profits on deleted work.

If the Contractor fails to notify the Engineer as provided above, or commences or continues project work in or affecting that portion of the project area before receiving written authorization from the Engineer, the Department may refuse or deny contract adjustments for that portion of the project work.”

3. Section 4.3 Extra Work is deleted in its entirety and replaced with the following:

“4.3 EXTRA WORK - All changes will be set forth in a written order. Upon receipt of a written order, the Contractor shall proceed with the changes as ordered. If the Contractor does not agree with any of the terms or conditions or in the adjustment or non-adjustment to the contract time and/or contract price set forth therein, it shall file with the Engineer, a written protest setting forth its reasons in detail within thirty (30) days after receipt of the written order. In all cases, the Contractor shall proceed with the work as changed. The protest shall be determined as provided in Subsection 5.13 “CLAIMS FOR ADJUSTMENT AND DISPUTES”. Failure to file such protest within the time specified shall constitute an agreement on the part of the Contractor with the terms, conditions, amounts and adjustment or non-adjustment to contract price and/or contract time set forth in the written order.

4. Add the following Section:

“Section 4.6 Price Adjustment. Any adjustment in contract price pursuant to a change or claim in this contract shall be made in one or more of the following ways:

- (1) By agreement to a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (2) By unit prices specified in the contract or subsequently agreed upon;
- (3) Whenever there is a variation in quantity for any work covered by any line item in the schedule of costs submitted as required by Subsection 7.2 Commencement Requirements by the Department at its discretion, adjusting the lump sum price proportionately;
- (4) In such other manner as the parties may mutually agree; or
- (5) At the sole option of the Department, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as specified in Subsection 9.4 A Allowances for Overhead and Profit and the force account provision of 9.4 Payment for Additional Work;
- (6) By a determination by the Department of the reasonable and necessary costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as computed by the generally accepted accounting principles and applicable sections of Chapters 3-123 and 3-126 of the HAR and Subsection 9.4A Allowances for Overhead and Profit herein”.

## **E. ARTICLE V - CONTROL OF WORK**

1. Subsection 5.12 (A) Partial Acceptance is amended by having its first sentence changed to read:

“If during the prosecution of the project, the Contractor completes a unit or portion of the project, the Contractor may request the Director to make final inspection of that unit or portion of the project.”

2. Section 5.13 Claims for Adjustments and Disputes is amended to read as follows:

“The Contractor may give notice in writing to the Engineer for claims that extra compensation, damages, or an extension of time for completion is due the Contractor for one or more of the following reasons:

- (1) Requirements not clearly covered in the contract, or not ordered by the Engineer as an extra work;
- (2) Failure between the State and the Contractor to agree to an adjustment in price for a contract change order issued by the State; or
- (3) An action or omission on the part of the Engineer requiring performance changes within the scope of the contract.

The Contractor shall continue with performance of the contract in compliance with the directions or orders of the Engineer, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) The notice in writing be given:
  - (a) Before the commencement of the work involved, if at that time the Contractor knows of such requirements or the occurrence of such actions or omissions; or
  - (b) Within thirty (30) calendar days after the Contractor knows of such requirements or the occurrence of such action or omission if the Contractor did not have such knowledge before the commencement of the work; or
  - (c) Within thirty (30) calendar days after receipt of the written contract change order that was not agreed upon by both parties; or
  - (d) Within such further time as may be allowed by the Engineer in writing.
- (2) The notice shall clearly state the Contractor’s intention to make claim and the reasons why the Contractor believes that additional compensation, changes or an extension of time may be remedies to which the Contractor is entitled; and afford the Engineer every facility for keeping records of the actual cost of work. Failure on the part of the Contractor to give such

notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute waiver of the claim for such extra compensation. The filing of such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed to prove the validity of the claim.

The Engineer will review the notice and render a decision. The Engineer's decision shall be final and conclusive unless, within thirty (30) calendar days from the date of the decision, the Contractor mails or otherwise furnishes a written appeal to the Director. The decision of the Director shall be final. Later notification of such claims shall not bar the Contractor's claim unless the State is prejudiced by the delay in notification. No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given before final payment under this contract. Any adjustment in the contract price made pursuant to this clause shall be determined according to Section 4.6 Price Adjustment.

The provisions of this Section shall not be construed as establishing any claims contrary to the terms of Section 4.2 Alterations.

Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any state officers and any Contractors from acting in collusion or bad faith in issuing or performing contract change orders which are clearly not within the scope of the contract."

3. Section 5.14 Value Engineering is amended to read as follows:

"In accordance with Section 103D-411, HRS, on projects with contract amounts in excess of two hundred fifty thousand dollars (\$250,000.00) the following Value Engineering Incentive Clause shall apply, and the Contractor submitting cost reduction proposals, will be allowed to share in those cost savings that ensue from the cost reduction proposals, hereinafter referred to as Value Engineering Change Proposal (VECP).

To qualify as a VECP:

- (1) the Contractor shall develop and submit a proposal,
- (2) the proposal must involve changes in the contract, and
- (3) the proposal must result in an estimated net savings in project cost of at least four thousand dollars (\$4,000). Net savings are those savings in project costs realized by the Department as the result of a VECP after deducting the Contractor's share of the cost savings.

The Contractor shall apply the following to allow the Contractor to share in the cost savings ensuing from VECPs accepted by the Department:

- (1) This VECP clause applies to VECPs developed and submitted by the Contractor and accepted by the Department. This VECP applies only to a proposal qualifying as a VECP at the time of submission to the Engineer.
- (2) A VECP:

- (a) must result in a quantifiable cost savings or identifiable benefits acceptable to the Department and provide a system, structure, procedure or process equivalent or better than the design specified in the contract;
  - (b) shall not impair essential or desirable functions and characteristics of a system, structure, procedure or process, including durability, service life, reliability, economy of operation, ease of maintenance, desired appearance, design, safety standards and impacts due to construction; and
  - (c) shall require a modification to the contract or a contract change order.
- (3) The Contractor shall submit the following with each proposal:
- (a) A statement identifying the proposal as a VECP and briefly describing the portion(s) of the project work involved or affected;
  - (b) A description of the differences between the existing contract requirements and the proposed VECP together with the comparative advantages and disadvantages of each including durability, service life, reliability, economy of operation, ease of maintenance, desired appearance, design, safety standards, impacts due to construction and other essential or desirable functions and characteristics;
  - (c) Complete final contract showing the proposed revisions similar to the original contract design and features, including submittal of:
    - 1. design calculations;
    - 2. the design criteria used; and
    - 3. a detailed breakdown of costs and expenses to construct or implement such revisions.

Before accepting the submission of final plans and specifications for a proposed VECP, the Department may require submittal of conceptual and preliminary plans and specifications together with a preliminary estimate and breakdown of related costs and expenses;

- (d) An itemization of contract changes required by the proposed VECP together with recommendations to implement or effect each such change;
- (e) A detailed breakdown of the total quantifiable cost savings to the State resulting from the proposed VECP, including the estimated reduction in the Contractor's performance costs and breakdown of the respective shares in such savings to be realized by the Department and the Contractor. The calculation of such cost savings shall take into account the costs incurred by the Contractor to develop, design, construct and implement the proposed VECP, including costs attributable to subcontractors, and/or expected to be incurred by the Department in reviewing and processing the proposed VECP;



(f) An itemized cost analysis indicating the original contract costs and quantities to be revised and/or replaced by the proposed VECP, the new costs and quantities generated by or attributable to the proposed VECP and the cost impacts of the proposed VECP on operational, maintenance, and other considerations;

(g) A detailed description of the time savings to be realized by using the proposed VECP, including identifying and quantifying the corresponding reduction in the contract completion time;

(h) A statement identifying the time periods within which the proposed VECP must be implemented in order for the Department to realize the maximum benefit in terms of quantifiable cost savings or identifiable benefits acceptable to the Department. Implementation time for the proposed VECP must include sufficient time for the Department to review the proposed VECP and finalize the appropriate contract modification or contract change order. Lack of sufficient review and processing time will constitute a basis for rejecting the proposed VECP;

(i) A listing of previous submissions of proposed VECPs by the Contractor on other State or Federal projects and the conditions and results thereof including the project name, number, type, location and duration and the responses and actions by the State and/or the Federal government in connection therewith;

(j) Sufficient data to substantiate and verify the accuracy of the proposed VECPs; and

(k) Additional information requested by the State.

(4) The Engineer is not required to consider VECP proposal for the following types of changes:

(a) Basic design of a bridge or other elevated structure or facility; and

(b) Type, size, elevation or structural requirements of footings or other types of foundations.

The Department's determination with respect to a proposed VECP shall be at the Department's sole discretion and its decision shall be final.

The State shall not be liable to the Contractor for costs or delays incurred by the Contractor in connection with or attributable to the Department's determination with respect to a proposed VECP, including development costs, anticipated profits, and increased material or labor costs.

If a proposed VECP is similar to a change in the plans or specifications for the project under consideration by the Engineer before or at the time the proposed VECP is submitted to the Department, the Department will be under no obligation to accept such proposed VECP and the Department may implement such changes to the plans and specifications without compensating the Contractor for such proposed VECP.

Unless and until the Department grants final acceptance to a proposed VECP, the Contractor shall do the work according to the contract. The Engineer shall consider work done by the Contractor related to or as a part of a proposed VECP before such final approval unauthorized work. The Department shall be under no obligation to pay for such work and may require the Contractor to remove such work and repair and/or restore the area and/or facility at no cost to the State.

The Engineer may accept proposed VECP in whole or in part. Acceptance shall be by a contract change order or modifying the contract to identify and describe the proposed VECP.

(5) If a proposed VECP is accepted by the Department, the required changes will be incorporated into the contract as appropriate and according to the contract, including changing the quantities of unit bid items, incorporating new mutually acceptable prices or by using force account alternative. The Department and the Contractor shall each share in the quantifiable cost savings resulting from the VECP equally according to the following formula:

$$S = \frac{(A - B - C)}{2}$$

where S = Share in quantifiable cost savings resulting from the VECP.  
A = Cost of the original contract bid items which are being revised and/or replaced by the VECP. B = The cost of the development, design and construction/implementation of the VECP accepted by the Department.

C = The costs incurred by the Department in reviewing and processing the proposed VECP.

(6) Also, submittal of proposed VECPs or other reduction proposals submitted under contracts for other State projects may also be submitted under this contract.

(7) The use of a VECP by the Department may be subject to the following, which must be noted or marked on the relevant sheets of the VECP:

“This data furnished pursuant to a value engineering incentive clause shall not be disclosed outside the State, or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate it in connection with a value engineering incentive proposal. This restriction does not limit the State’s right to use this data, without limitation, if it is or has been obtained from another source or is otherwise available. Once the value engineering incentive proposal is approved and accepted by the Department, the State shall have the right to use and disclose any data relating thereto in any manner and for any purpose whatsoever, including, without limitation, the right to permit others to use, duplicate and/or disclose such data.”

Contract modifications and contract change orders implementing the VECP shall reference that such modifications and change orders are being made pursuant to this contract clause.

(8) All proposed VECPs shall comply with and conform to all applicable Federal, State or County laws, statutes, ordinances, rules and regulations, whether currently in effect or in force hereafter.

(9) The Department may revoke its approval of the VECP if the work being performed pursuant thereto is unsatisfactory to the Engineer. Upon such revocation, the Engineer may order the Contractor to:

- (a) Remove all such unsatisfactory work,
- (b) Immediately stop the use of any such process or procedure being used in connection with such VECP, and/or
- (c) Restore and/or repair the affected portions of the project to a condition from which the original contract requirements may be implemented at no cost to the State.

Rejection of such unsatisfactory work and the revocation of VECP approval by the State in connection therewith shall not constitute the basis of any claim against the State, including, without limitation, any claims for delay.

(10) If the Department approves modifications to VECP previously approved by the Department, whether due to field conditions or otherwise, the Contractor will be reimbursed or credited for the work performed pursuant to such modifications at the original contract bid prices, unless otherwise authorized by the Department, including, without limitation, payment by force account.

(11) For VECPs involving the preparation of new plan sheets, the Contractor shall submit master tracings of such sheets in accordance with current or such other guidelines as the Department may designate. The preparation and submission of the master tracings shall be coordinated with the Engineer or the Engineer's designated representative. The master tracings shall be submitted to the Engineer within two (2) months after full execution of the contract modification or contract change order implementing the VECP.

(12) The Contractor shall provide to the Department fifteen (15) copies of all documents submitted pursuant to a proposed VECP, including plans, specifications, calculations (including all working sketches and computer data), time schedules and cost estimates together with any supporting data.

(13) The Contractor shall provide to the Department:

- (a) thirty (30) copies each of all full-sized plans, reduced-sized plans and specifications prepared in connection with the VECP and approved by the Department, and
- (b) Six (6) copies of all approved calculations (including all working sketches and computer data)."

## **F. ARTICLE VI - CONTROL OF MATERIAL**

### **1. Section 6.11 Trade Names and Alternatives - Subsection A. Qualifications**

before Bid Opening is amended as follows:

“A. QUALIFICATION BEFORE BID OPENING - When the specifications and/or plans specify brand materials or equipment by brand name to indicate a quality, style, appearance, or performance, the bidder will be assumed to have based his bid on one of the specified products, and where such proprietary products must submit a request to the Project Manager for review and approval at the earliest date possible, but in any event, such request must be received at the Project Manager’s Office designated in the Notice to Bidders not later than fourteen (14) calendar days before the bid opening date, not including the bid opening date.

It shall be the responsibility of the bidder to submit, in quintuplicate, sufficient evidence based upon which a determination can be made by the Director that the alternate brand is qualified. The evidence shall be transmitted with a covering letter which shall list the evidence submitted and the items for which the substitution is requested.

If the evidence accompanying a request for substitution is insufficient to qualify a particular model, the request shall be denied provided that further evidence may be submitted to qualify the item five (5) days prior to the bid opening date if the initial request was made prior to the deadline set above.”

2. Section 6.12 is deleted in its entirety.

3. Section 6.13 is amended and relocated to Subsection 2.16(B).

4. Add the following Section:

“Section 6.14 Assignment of Antitrust Claim for Overcharges for Goods and Materials Purchased

(a) Vendor and purchaser recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, vendor hereby assigns to purchaser any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and which are not passed on to the purchaser under an escalation clause.

(b) Contractor and owner recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the owner. Therefore, contractor hereby assigns to owner any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and any change order. In addition, contractor warrants and represents that each of its first tier suppliers and subcontractors shall assign any and all such claims to owner, subject to the aforementioned exception.”

**G. ARTICLE VII - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

1. Section 7.1 Laws to be Observed is amended as follows:

(a) Delete from the second paragraph the words “protect and indemnify” and substitute therefore “hold harmless, indemnify, defend and where appropriate, insure”.

(b) In the last paragraph delete “Industrial Safety, Chapter 376, H.R.S.”, and add “Temporary Disability Insurance, Chapter 392, H.R.S.; Prepared Health Care Act, Chapter 393, H.R.S.; and Occupational Safety and Health, Chapter 396, H.R.S.”

2. Section 7.2 Wages and Hours Requirements. The first paragraph is amended to read as follows:

“The Contractor shall at all times observe and comply with all provisions of Chapter 104, H.R.S., the significant requirements of which are emphasized in Attachment 1 entitled “Requirements of Chapter 104, H.R.S. Wages and Hours of Employees on Public Works Law”, appended hereto and which require, in part, the following:”

3. Subsection 7.2 A. Hours of Labor is amended by adding the following to the end of the first paragraph:

“. . .plus the cost of fringe benefits according to the wage rate schedules issued by the Director of Labor and Industrial Relations”.

4. Subsection 7.2 B. Rate of Wages is amended as follows:

(a) The first paragraph is amended by adding the following:

“The Contractor shall pay the prevailing wages to the various classes of laborers and mechanics as determined by the State Director of Labor and Industrial Relations and any increases in the prevailing wage rates as determined by said Director, and as published in the wage rate bulletins, for the entire term of the contract.”

(b) The second paragraph is deleted in its entirety and the following added in lieu thereof:

“The most current wage rate schedule as established by the State Department of Labor and Industrial Relations shall be applicable throughout the life of the contract.

The wage rate schedule is not physically enclosed in the bid documents but the wage rate schedule is incorporated herein by reference and is made a part of the bid documents. Said wage rate schedule may be obtained from the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii. When the bid documents are made available on the neighbor islands, copies of the wage rate schedule may also be obtained from the office of the respective neighbor island District Engineer - Highways Division.

The wage rate schedule current at the time of award shall be physically included in the contract documents executed by the successful bidder.”

5. Section 7.3 Workmen’s Compensation Act is amended by deleting the word “from” in the third line and inserting “are insured for.”

6. Section 7.4 Citizen Labor is amended by deleting the entire section and replacing it with the following:

“7.4 CITIZEN AND RESIDENTIAL LABOR FORCE -

(1) **Citizen Labor** - No person shall be employed as a laborer or mechanic unless such person is a citizen of the United States or eligible to become one; provided that persons without such qualifications may be employed with the approval of the Governor until persons who are citizens and are competent for such services are available for hire.

(2) **Residential Labor Force** - In accordance with Act 68; SLH 2010, no less than eighty (80) percent of the bidder's labor force working on the contract **shall** be provided by Hawaii residents. This act applies to all construction procurements under HRS Chapter 103D; however this act does not apply to procurements for professional services under Section 103D-304 and small purchases under Section 103D-305. This act is also applicable to any subcontract of \$50,000.00 or more in connection with this contract.

Residency shall be as defined by HRS section 78-1.

(3) Percentage of workforce shall be determined by dividing the labor hours (including subcontractors) provided by residents working on the project divided by the total number of hours worked by all employees of the contractor in the performance of the contract. Hours worked by employees within shortage trades as determined by the Department of Labor and Industrial Relations shall not be included in the calculation of this percentage.

(4) Certification of compliance with the forgoing provisions shall be made by the contractor in the form of a written oath submitted to the Procurement Officer on a monthly basis for the duration of the contract.

(5) Sanctions for non compliance with these provisions are as follows:

- (a) Temporary suspension of work on the project until the contractor or subcontractor complies with these provisions.
- (b) Withholding of payment on the contract until compliance is attained.
- (c) Permanent suspension of work on the contract.
- (d) Recovery of any moneys expended on the contract.
- (e) Debarment or suspension of the contractor under Section 103D-702.

This Section shall not apply when its application will disqualify the State from receiving federal funds or aid.”

7. Section 7.7 Patented Devices, Materials, and Processes In the second sentence delete the words “indemnify and save harmless” and substitute therefore “hold harmless, indemnify, defend and where appropriate, insure”.

8. Section 7.15 Responsibility for Damage is amended as follows:

a. In the first sentence of the first paragraph delete the words “indemnify and save harmless” and substitute therefore “hold harmless, indemnify, defend and where appropriate, insure”.

b. In the second sentence of the second paragraph delete the words “hold and save the State harmless” and substitute therefore “hold harmless, indemnify, defend and where appropriate, insure the State”.

## **H. ARTICLE VIII - PROSECUTION AND PROGRESS**

1. Section 8.1 Subcontracting is deleted in its entirety and the following substituted therefore:

“8.1 SUBCONTRACTING - The Contractor shall not subcontract, sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or his right, title or interest in the contract without written consent of the Director. The Contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection or retention of subcontractors, and in the procurement of materials and leases.

Subject to the provisions of Section 103D-302, H.R.S., the Contractor may subcontract a portion of the work, but the Contractor shall remain primarily responsible for the work so subcontracted, provided that the Contractor shall not be permitted to subcontract work to any subcontractor who has been suspended by the State. If requested by the Engineer, the Contractor shall provide a copy of any subcontract to the Engineer within 7 calendar days.

The Contractor shall perform with his own organization, work amounting to not less than 30 per cent of the total contract cost, except that any items designated in the contract as “specialty items” may be performed by subcontract and the cost of any such specialty items so performed by subcontract may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with his own organization. Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be estimated by the Director and be based on the cost of such portion of the contract item.

Under Section 103D-302, H.R.S., the Contractor is required to list the names of persons or firms to be engaged by the Contractor as a joint contractor or subcontractor in the performance of the contract. Bids that do not comply with the above requirements may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the subcontractor or

joint contractor is equal to or less than one percent of the total bid amount. When a change in a listed subcontractor is requested by the Contractor, submission of a formal release from the listed subcontractor is required by the State before a substitution will be considered for approval regardless of whether the substitute is another subcontractor or the Contractor himself.

When any portion of the work which has been subcontracted is not prosecuted in a manner satisfactory to the Director, the Contractor, upon receipt of a written notice thereof, shall immediately remove the subcontractor from the project, and the subcontractor shall not again be employed on the project.

No subcontract shall in any case release the Contractor of his liability under the contract and bonds.

2. Section 8.3 Insurance and Work Schedule is amended as follows:

(a) Subsection 8.3A is deleted in its entirety and the following substituted therefore:

“A. Certificate of Insurance from an insurance company or agency, licensed in the State of Hawaii, showing full coverage of the Contractor for:

(1) Workers’ Compensation

(2) Comprehensive Automobile Liability: Minimum limit of \$1,000,000 combined single limit per accident for bodily injury and property damage with the State of Hawaii named as additional insured.

(3) Commercial General Liability (Occurrence form): Minimum limit of \$2,000,000 combined single limit per occurrence with the State of Hawaii named as additional insured for each of the following:

- a. Products - Completed/Operations Aggregate,
- b. Personal & Advertising Injury, and
- c. Bodily Injury & Property Damage

(4) Builder’s Risk:

(a) New Buildings - The Contractor shall take out a policy of builder’s risk insurance, for the full replacement value of the insurable improvements of the project from a company licensed to do business in the State of Hawaii, naming the State as additional insured under each policy, covering all work, labor and materials furnished by such Contractor and all its subcontractors against loss by fire, windstorm, lightning, explosion and other perils covered by the standard Extended Coverage Endorsement, and vandalism and malicious mischief.

(b) Building Renovation Contract - The Contractor shall take out a policy of builder’s risk insurance in the amount equivalent to the contract amount, with the State named as additional insured under each policy, covering all work, labor and materials furnished by such Contractor and all its Subcontractors against loss by fire,



windstorm, lightning, explosion and other perils covered by the Extended Coverage Endorsement, and vandalism and malicious mischief.

(c) Site Development - The Contractor is generally not required to obtain Builder's risk insurance for site development contracts. However, if any building or structure is constructed or renovated on site development contracts, either items (a) New Buildings, or (b) Building Renovation Contract, above, shall apply.

All policies must provide that 30 days prior written notice of cancellation or material change in coverage be given to certificate holders stated above."

(b) Subsection 8.3B(1) is amended to read "Workers' Compensation".

3. Section 8.6 Temporary Suspension of Work is amended by adding the following:

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

(1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or

(2) for which an adjustment is provided for or excluded under any other provision of this contract.

No claim under this clause shall be allowed:

(1) For any costs incurred more than twenty (20) days before the Contractor shall have notified the Engineer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

Any adjustment in contract price made pursuant to this clause shall be determined according to the price adjustment clause of this contract."

4. Section 8.7 Determination and Extension of Contract Time - In the first (1st) line of the fifth (5th) paragraph, the word "imptssible" is to be corrected to "impossible".

5. Section 8.8 Failure to Complete on Time and Liquidated Damages is amended as follows:

(a) The schedule of Liquidated Damages shall be amended as follows:

| <u>“SCHEDULE OF LIQUIDATED DAMAGES</u>   |                         |                                     |                          |
|--|-------------------------|-------------------------------------|--------------------------|
| <u>Total Amount Including Extras Set up in Contract</u>  |                         | <u>Amount of Liquidated Damages</u> |                          |
| <u>For More Than</u>   | <u>To and Including</u> | <u>Per Working Day</u>              | <u>*Per Calendar Day</u> |
| \$0.00   | \$25,000.00             | \$63.00                             | \$45.00                  |
| \$25,000.00  | \$50,000.00             | \$105.00                            | \$75.00                  |
| \$50,000.00  | \$100,000.00            | \$154.00                            | \$110.00                 |
| \$100,000.00   | \$500,000.00            | \$210.00                            | \$150.00                 |
| \$500,000.00   | \$1,000,000.00          | \$315.00                            | \$225.00                 |
| \$1,000,000.00   | \$2,000,000.00          | \$420.00                            | \$300.00                 |
| \$2,000,000.00   | \$5,000,000.00          | \$630.00                            | \$450.00                 |
| \$5,000,000.00   | \$10,000,000.00         | \$840.00                            | \$600.00                 |
| \$10,000,000.00  | -----                   | \$980.00                            | \$700.00                 |
| *This schedule to be used only when the work is not completed within the specified number of calendar days.” |                         |                                     |                          |

(b) Add the following:

“The findings of the Director 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 Section 8.9 - Default and Termination of Contract in case the Contractor shall fail in the judgement of the Director to make reasonable and satisfactory progress after such allowance of time has been granted. Liquidated damages shall be assessed in the amount set forth in the Schedule of Liquidated Damages or as specified in the proposal.

(a) Liquidated Damages Upon Termination. If the State so terminates the Contractor’s right to proceed, the resulting damage will consist of such liquidated damages for such reasonable time as may be required for final completion of work.

(b) Liquidated Damages In The Absence Of Termination: If the State does not terminate the Contractor’s right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.”

6. Section 8.9 Default and Termination of Contract is amended to read as follows:

“(A) If the Contractor:

- (1) Fails to begin the work under the contract within the time specified in the Notice to Proceed, or
- (2) Fails to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work, or
- (3) Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- (4) Discontinues the prosecution of the work, or
- (5) Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- (6) Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- (7) Allows any final judgement to stand against the Contractor unsatisfied for a period of ten (10) days, or
- (8) Makes an assignment for the benefit of creditors, or
- (9) Fails to comply with 49CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" on Federal Aid projects, or
- (10) For any other cause whatsoever, fails to carry on the work in an acceptable manner, the Engineer will give notice in writing to the Contractor and its surety of such delay, neglect, or default.

The Department may take the prosecution of the work out of the hands of the Contractor or surety without violating the contract if the Contractor or surety receives written notification from the Engineer of such delay, neglect or default and the Contractor or surety fails to proceed according to the notice to remedy the delay, neglect or default, within a period of ten (10) days after receipt of said notice. The Department may appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable and may contract for the completion of the project according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of said project in an acceptable manner.

All costs and charges incurred by the Department, together with the cost of completing the work under contract, will be deducted from any monies due or which would or might have become due to the Contractor had the Contractor been allowed to complete the work under the contract. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Department the amount of such excess.

The Department may bar Contractors from bidding and working on construction projects of the Department for two (2) consecutive years from the date of termination. This includes its owners, officers, and managerial and

supervisory staff terminated under provisions of this section.

(B) Erroneous Termination For Default. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

(C) Additional Rights and Remedies. The rights and remedies of the State provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(D) Termination For Convenience.

(1) Terminations. The Director may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Director shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor shall stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Director may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

(3) Right to Construction and Goods. The Director may require the Contractor to transfer title and deliver to the State in the manner and to the extent ordered by the Director:

(a) Any completed constructions; and

(b) The partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "construction material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The Contractor shall protect and preserve property in the possession of the Contractor in which the State has an interest. If the Director does not exercise this right, the Contractor shall use best efforts to sell such construction, goods, and construction materials according to the standards of Section 490:2-706, H.R.S. This in no way implies that the State has breached the contract by exercise of the termination for convenience clause.

(4) Compensation.

(a) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Subchapter 15, Chapter 3-122, H.A.R., bearing on such claim. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Director may pay the Contractor, if at all, an amount set according to Subsection 8.9(D)(4)(c).

(b) The Director and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of construction, supplies, and construction materials under Subsection 8.9(D)(3) of this clause, and the contract price of the work not terminated.

(c) Absent complete agreement under Subsection 8.9(D)(4)(b) of this clause, the Director shall pay the Contractor the following amounts, provided payments under Subsection 8.9(D)(4)(b) shall not duplicate payments under this subsection the total (without duplication of any items) of:

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

2. Costs of settling and paying claims arising from the termination of subcontracts or orders pursuant to Subsection 8.9(D)(2) of this clause. These costs must not include costs paid according to Subsection 8.9(D)(4)(c)1 above;

3. The reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract; and

4. The total sum to be paid the Contractor under this subsection shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of any sales of construction supplies, and construction materials under Subsection 8.9(D)(3) of this clause, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under Subsections 8.9(D)(4)(b) and 8.9(D)(4)(c) of this clause shall be according to Chapter 3-123, H.A.R.”

## **I. ARTICLE IX - MEASUREMENT AND PAYMENT**

1. Section 9.3 Compensation for Altered Quantities is amended as follows:

- a. Add to the end of the first sentence “except as provided hereinbelow.”
- b. Add the following paragraphs to the end of the Section:

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

Price adjustment will be based on the increased or decreased actual cost per unit of said item or items to the Contractor, or at the option of the Engineer, such adjustment will be made on the basis of force account according to Section 9.4 Payment for Additional Work”.

2. Section 9.4 Extra and Force Account Work is deleted in its entirety and replaced with the following:

“9.4 PAYMENT FOR ADDITIONAL WORK - Work performed in accordance with the requirements and provisions of Section 4.3 will be paid for at the unit prices or lump sum prices stipulated in the order authorizing the work or, if on a force account basis, the Contractor shall be compensated in the following manner:

### **A. ALLOWANCES FOR OVERHEAD AND PROFIT**

1. In determining the cost or credit to the Department resulting from a change, the allowances for all overhead, including extended overhead resulting from adjustments to contract time (including home office, branch office and field overhead, and related delay impact costs) and profit combined, shall not exceed the percentages set forth below:
  - a) For the Contractor, for any work performed by its own labor forces, fifteen percent (15%) of the direct cost;
  - b) For each subcontractor involved, for any work performed by its own forces, fifteen percent (15%) of the direct cost;

- c) For the Contractor or any subcontractor, for work performed by their subcontractors, seven percent (7%) of the amount due the performing subcontractor.
2. Not more than three markup allowance line item additions not exceeding the maximum percentage shown above will be allowed for profit and overhead, regardless of the number of tier subcontractors.
3. The allowance percentages will be applied to all credits and to the net increase of direct costs where work is added and deleted by the changes.

## B. LABOR

For all hourly workers, the Contractor will receive the rate of wage including fringe benefits when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work, which shall be agreed upon in writing before beginning work for each and every hour that said labor is actually engaged in said work.

All markups for overhead and profit shall be added subject to limitations established in Subsection 9.4A "ALLOWANCES FOR OVERHEAD AND PROFIT".

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

## C. INSURANCE AND TAXES

The Contractor and subcontractor(s) will also receive the actual additional costs paid for property damage, liability, workers' compensation insurance premiums, State unemployment contributions, Federal unemployment taxes, social security and Medicare taxes to which a markup of up to six percent (6%) may be added.

## D. MATERIALS

For materials accepted by the Engineer and used, the Contractor and subcontractor(s) shall receive the actual cost of such materials delivered and incorporated into work, plus a markup allowed under Subsection 9.4A "ALLOWANCES FOR OVERHEAD AND PROFIT".

## E. SUBCONTRACTORS

Subcontractor costs shall be the actual costs of the subcontractor marked up as defined in subsection 9.4B "LABOR" plus a markup allowed under Subsection 9.4A "ALLOWANCES FOR OVERHEAD AND PROFIT".

## F. EQUIPMENT

1. For any machinery or special equipment (other than small tools as

herein defined in paragraph 6) owned by the Contractor or a related entity, the use of which has been authorized by the Engineer, the Contractor will be paid at the per-hour rental rates based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Rate Blue Book for Construction Equipment including the estimated operating cost per hour and regional correction provided therein.

If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rates shall be as agreed upon in writing by the Contractor and the Engineer prior to the use of said machinery or equipment. If there is no agreement, the Engineer will set a rate. The Contractor may contest the rate pursuant to Section 5.13 "CLAIMS FOR ADJUSTMENT AND DISPUTES".

2. Rental rates which are higher than those specified in the aforesaid Rental Rate Blue Book publication may be allowed where such higher rates can be justified by job conditions such as work in water and work on lava, etc. Request for such higher rates shall be submitted in writing to the Engineer for approval prior to the use of the machinery or equipment in question.
3. The rental rate for trucks not owned by the Contractor shall be those as established under the Hawaii State Public Utilities Commission, which will be paid for as a material item pursuant to Subsection 9.4D "MATERIALS".

Rental rates for Contractor-owned trucks not listed in the Rental Rate Blue Book shall be agreed upon in writing by the Contractor and Engineer prior to the use of said trucks. If there is no agreement, the Engineer shall set the rate. The Contractor may contest the rate pursuant to Section 5.13 "CLAIMS FOR ADJUSTMENT AND DISPUTES".

4. All rental rates for machinery and equipment shall include the cost of fuel, oil lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.
5. All machinery and equipment shall be in good working condition and suitable for the purpose for which the machinery and equipment is to be used.
6. Individual pieces of equipment or tools having a replacement value of five hundred dollars (\$500) or less, whether damaged or consumed by use, shall be considered to be small tools and not paid for separately but be included in the cost of the markup for overhead and profit.
7. The total of all force account rental charges accrued over the duration of the contract for a specific item of equipment shall not exceed the replacement cost of that equipment.

The Contractor shall provide the cost of replacement to the Engineer prior to using the equipment. If the Engineer does not agree with the



replacement cost, the Engineer shall set the replacement cost. The Contractor may contest the replacement cost pursuant to Section 5.13 “CLAIMS FOR ADJUSTMENT AND DISPUTES”.

8. Should the item of equipment be rented from an unrelated entity, the rental cost will be treated as a material cost under Subsection 9.4D “MATERIALS”.
9. The following provisions shall govern in determining the compensation to be paid to the Contractor for use of equipment or machinery on the force account method:
  - a. Transportation and/or Mobilization

The location from which the equipment is to be moved or transported shall be approved by the Engineer.

Where the equipment must be transported to the site of the force account work, the Department will pay the reasonable cost of mobilizing and transporting the equipment, including its loading and unloading, from its original location to the site of force account work. Upon completion of the work the Department will pay the reasonable cost of mobilizing and transporting the equipment back to its original location, or to another location, whichever cost is less.

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

Where the equipment is self-propelled, the Department will pay the cost of moving the equipment by its own power from its original location to the site of the force account work. Upon completion of the work the Department will pay the reasonable cost of moving of the Equipment back to its original location or to another location, whichever cost is less.

Payment for mobilizing and transportation above provided, will not be made if the equipment is used on the work in any other way than solely for extra work paid for on a force account basis.

At the discretion of the Engineer, when the Contractor desires to use such equipment for other than force account work, the costs of mobilization and transportation may be prorated between the force account and non-force account work.

- b. Rental

The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the equipment is no longer needed. In the event the

equipment must standby due to work being delayed or halted by reason of design, traffic, or other related problems uncontrollable by the Contractor, excluding Saturdays, Sundays and Legal Holidays, unless the equipment is used to perform work on such days, the rental shall be two hours per day until the equipment is no longer needed.

The rental time to be paid will be for the time actually used.

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

Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours, if any, that the machinery or equipment was in operation.

In the event the force account work is completed in less than 8 hours, equipment rental shall nevertheless be paid for a minimum 8 hours.

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

No additional premium beyond the normal rates used, will be paid for equipment used over 8 hours per day or 40 hours per week.

10. Pickup trucks, flatbed trucks, vans, storage trailers, unless specifically requested by the Engineer for the force account work, shall be considered incidental to the force account work, and the costs therefore are included in the markup allowed under Subsection 9.4A "ALLOWANCES FOR OVERHEAD AND PROFIT".

#### G. STATE EXCISE (GROSS INCOME) TAX AND BOND

A sum equal to the current percentage rate for the State excise (Gross Income) tax on the total sum determined in Subsections B, C, D, E, and F, and any required bond premium shall be added as compensation to the Contractor. The actual bond premium not to exceed one percent (1%) shall be added to Subsections B, C, D, E, and F in this section when applicable.

The compensation as determined in Subsections B, C, D, E, F, and G in this section shall be deemed to be payment in full for work paid on a force account basis.

#### H. RECORDS

The Contractor and the Engineer shall compare records of the labor, materials and equipment rentals paid by the force account basis at the end of each day. These daily records, if signed by both parties, shall thereafter be the basis for the quantities to be paid for by the force account method.

The Contractor shall not be entitled to payment for force account records not signed by the Engineer.

## I. STATEMENTS

No payment will be made for work on a force account basis until the contractor has submitted to the Engineer duplicate, itemized statements of the cost of such force account work detailed as follows:

1. Laborers - Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman and also the amount of fringe benefits payable if any.
2. Equipment - Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
3. Materials -
  - a. Quantities of materials, prices and extensions
  - b. Costs of transporting materials, if such cost is not reflected in the prices of the materials
  - c. Statements shall be accompanied and supported by receipted invoices for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall submit an affidavit certifying that such materials were taken from stock and that the amount claimed represents the actual cost to the Contractor.
4. Insurance - Cost of property damage, liability and workers' compensation insurance premiums, unemployment insurance contributions, and social security tax."

### 3. Section 9.8 Progress Payments - is amended as follows:

(A) The second paragraph is deleted in its entirety and the following substituted therefore:

"No progress payment will be made when the total value of the work done since the last estimate amounts to less than \$1,000.00."

(B) The following shall be added to the end of the section:

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

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

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

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

4. Section 9.9 Acceptance and Final Payment is amended as follows:

(A) Item (3) in the third paragraph is amended to read as follows:

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

(B) Replace Item (4) in the third paragraph with the following:

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

5. Add the following Section:

“Section 9.12 Prompt Payment:

(A) In accordance with Section 103-10.5, H.R.S., any money other than retainage, paid to a Contractor shall be dispersed to Subcontractors within ten (10) consecutive calendar days after receipt of the money in accordance with the terms of the Subcontract, provided that the Subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes, and

(B) Upon final payment to the Contractor, full payment to the Subcontractor, including retainage, shall be made within ten (10) consecutive calendar days after receipt of the money, provided there are no bona fide disputes over the Subcontractor’s performance under the subcontract.

1. Definition

a. Subcontract - Any written agreement between the Contractor and its subcontractors which contains the conditions under which the Subcontractor is to perform a portion of the work for the Contractor.

b. Bona Fide Disputes - The following are examples of “bona fide disputes”:

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

(2) When work done by a Subcontractor is paid for and later found to be non-conforming or unacceptable and the amount previously paid by the State is deducted from subsequent payment requests;

(3) When the Subcontractor fails to promptly correct any and all deficiencies and/or non-conforming work cited by the State; or

(4) When the Subcontractor fails to fulfill any term, condition or requirement of its subcontract.

2. Filing of Complaint and Verification of its Validity:

Complaints by Subcontractors of late or non-payment must be submitted in writing to the Director stating (1) the amount past due for work performed and already paid for by the State, (2) that all the terms, conditions or requirements of its subcontract have been met and (3) that no bona fide dispute over its performance exists. The Director or authorized representative will hear and receive evidence to determine the validity of the complaint and the Director's decision on the matter shall be final.

3. Follow-Up Action:

If the Director or authorized representative determines that the Contractor failed to make payment required under the subcontract to Subcontractor with whom the Contractor has no "bona fide dispute" within the time period specified above, the Director shall inform the Contractor of the findings and request the Contractor make payment accordingly. If the Contractor does not act promptly, the Director or authorized representative shall take appropriate action as allowed under this contract and/or refer the matter to the Contractor Licensing Board for appropriate action under Section 444-17(15) H.R.S. regarding the Revocation, Suspension and Renewal of (Contractor) Licenses.

J. FORMS

1. Delete Exhibit D - Performance and Payment Bond.
2. Delete Exhibit E – Non-Gratuity Affidavit.
3. Add the following documents which are attached hereto:
  - (a) Surety Performance Bond
  - (b) Performance Bond
  - (c) Surety Labor and Material Payment Bond
  - (d) Labor and Material Payment Bond
  - (e) Chapter 104, HRS Compliance Certificate.
  - (f) Certification of Compliance for Final Payment (SPO Form 22)

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION

AIRPORTS DIVISION

AIRPORT DIVISION SUPPLEMENT TO SPECIAL PROVISIONS

AIRPORTS DIVISION SUPPLEMENT  
TO SPECIAL PROVISIONS

The following additional amendments to the General Provisions and Special Provisions are applicable to this project:

ARTICLE I - DEFINITIONS AND TERMS

1.1 ABBREVIATIONS is hereby added to the General Provisions:

|            |  |
|------------|--|
| A.C.I.     | - American Concrete Institute                      |
| A.N.S.I.   | - American National Standards Institute            |
| A.I.T.C.   | - American Institute of Timber Construction        |
| C.R.S.I.   | - Concrete Reinforcing Steel Institute             |
| I.E.E.E.   | - Institute of Electrical and Electronic Engineers |
| I.E.S.     | - Illuminating Engineering Society                 |
| P.C.A.     | - Portland Cement Association                      |
| R.L.H.     | - Revised Laws of Hawaii                           |
| S.L.H.     | - Session Laws of Hawaii                           |
| U.B.C.     | - Uniform Building Code                            |
| W.C.L.I.B. | - West Coast Lumber Inspection Bureau              |

1.41 REPETITIONS - Delete the word "or" before the words "of the Director" and add the words, "by the Engineer", to the Engineer", or "of the Engineer", at the end of the last line in the paragraph. Where the words "as shown", "as detailed", "as indicated", or words of like import are used in the Contract, reference is to the Plans unless the context clearly indicates a different meaning.

DEFINITIONS AND TERMS is hereby added to the General Provisions:

1.44 ADMINISTRATOR - the Administrator of the Federal Aviation Administration, either acting directly or through his duly authorized representatives.

1.45 AIRPORT - any area of land or water which is used or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used or intended for use, for airport buildings or other airport facilities.

1.46 AIRPORTS DIVISION - the State of Hawaii, Department of Transportation, Airports Division.

1.47 AIRPORT OPERATIONAL AREA - any portion of the airport, from which the public is restricted by fences or appropriate signs, and not leased or demised to anyone for exclusive use, and shall mean and include runways, taxiways, all ramp and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and landing areas.

1.48 BUILDING AREA - That part of any airport which is used, considered or intended to be used for airport buildings or other airport facilities, together with all airport buildings and facilities located thereon.

1.49 HAZARDOUS AREA - Any area directly adjacent to existing in use runways, taxiways, aprons, or hardstands.

1.50 CRITICAL AREA - An area, associated with certain electronic or navigational aids, where Contractors' operations would interfere with the signal or operation of such aids to air navigation.

1.51 ENGINEER - The Airports Division Administrator, or his authorized representatives.

1.52 NOT INCLUDED (N.I.C.) - Work indicated on the drawings and/or noted in the specifications as N.I.C. is not a part of the work to be performed under this contract.

1.53 FEDERAL SPECIFICATIONS - The Federal Specifications and Standards, and supplements, amendments, and indices thereto, as prepared and issued by the General Services Administration of the Federal Government. They are on file at the Government Documents Collection of the University of Hawaii in Honolulu, and may also be obtained from General Services Administration Region 3, Federal Supply Service, Printed Materials Supply Division, General Services Regional Office Building, Washington, D.C. 20407.

1.54 STANDARD SPECIFICATIONS - "Standard Specifications for Road and Bridge Construction and Public Works Construction", State of Hawaii, 1994.

1.55 LAWS - Reference to federal, state, and city and county laws, ordinances, rules and regulations, and standard specifications, include amendments effective as of the date of the call for sealed proposals.

1.56 LIGHTING - A system of fixtures providing or controlling the light sources used on or near the airport or within the airport buildings. The field lighting includes all luminous signals, markers, floodlights and illuminating devices used on or near the airport to promote visual identification of the airport or to aid in the operation of aircraft landing at, taking off from or taxiing on the airport surface.

1.57 OWNER OR SPONSOR - The State of Hawaii, acting by and through its Department of Transportation, which either individually or jointly with one or more other Public Agencies, submits to the Administrator, in accordance with the Federal Airport Act, an application for a grant of funds for airport development.



1.58 NATURAL MATERIALS - As referred to in this specification are mineral aggregates for prepared base, asphaltic concrete, Portland cement concrete and native stone or rock for rubble masonry construction.

1.59 STRUCTURES - Structures shall mean buildings, culverts, including headwalls and end walls, drainage construction such as storm sewers, gutters, catch basins, drop inlets, manholes, retaining walls, light structures and other construction which may be encountered in the building of the runways, landing strips, taxiways, roadways, parking lots and terminal facilities.

1.60 SUPPLEMENTARY DOCUMENTS - All documents in addition to the initial specifications and drawings such as but not limited to all addenda, contract field notifications, change orders, field orders issued by the State or the Engineer and all shop drawings, sketches, field orders, cut sheets, brochures, parts lists, written and/or drawing installation instructions, samples or any other document deemed as a supplementary document by the State or the Engineer.

1.61 CONSTRUCTION MANAGEMENT CONSULTANT OR MANAGING CONSULTANT - The representative of the Engineer, who will perform surveillance and coordinate matters pertaining to the contract plans and specifications.

1.62 SEWER DIVISION - Division of Wastewater Management, Public Works Department, County of Honolulu or other appropriate County.

1.63 DRAINAGE - The system of pipes, drainageways, ditches and structures by which surface or subsurface waters are collected and conducted from the airport area.

1.64 PAVEMENT - The combined subbase, base and surface courses considered as a single unit, excluding shoulders.

## ARTICLE II - PROPOSAL REQUIREMENTS AND CONDITIONS

2.6 EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF WORK is amended by deleting the second paragraph in its entirety and substituting the following:

"The Contractor shall have the sole responsibility of satisfying himself concerning the nature and location of work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation access, disposal, handling and storage of materials; availability and quality of labor, water and electric power; availability and condition of roads; climatic conditions and seasons; physical conditions at the worksites and the project area as a whole; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; equipment and facilities needed preliminary to and during performance of the contract; and all other matters which can in any way affect performance of the

contract, or the cost associated with such performance. The failure of the Contractor to acquaint himself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully performing the contract".

#### ARTICLE III - AWARD AND EXECUTION OF CONTRACT

3.2 AWARD OF CONTRACT is amended by adding the following:

"No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this contract.

The State may award other contracts for additional work, and the Contractor shall fully cooperate with such other Contractor and carefully fit his own work to that provided under the other contracts as may be directed by the State. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor.

The provisions of this contract shall be incorporated into each subcontract entered into by the Contractor. This Contract shall be subject to the written approval of the Director and shall not be binding until so approved.

The award of contract, if it is awarded, will be made after the opening of bids to the lowest responsible bidder whose Proposal complies with all the requirements."

#### ARTICLE IV - SCOPE OF WORK

4.4 MAINTENANCE OF TRAFFIC - is amended by deleting the second paragraph in its entirety and substituting the following in lieu thereof:

"It is the explicit intention of the contract that the safety of aircraft, as well as the Contractor's equipment and personnel, is the most important consideration. It is understood and agreed that the Contractor shall provide for the free and unobstructed movement of aircraft in the air operations area of the airport with respect to his own operations and the operations of all his subcontractors as specified in Section 8.4 - LIMITATIONS OF OPERATIONS. It is further understood and agreed that the Contractor shall provide for uninterrupted operation of visual and electronic signals (including power supplies thereto) used in the guidance of aircraft while operating to, from, and upon the airport as specified in Section 7.17 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES.

When the contract requires the maintenance of vehicular traffic on an existing road, street, or highway during the Contractor's performance of work that is otherwise provided for in the contract plans and specifications, the Contractor shall keep such road, street, or highway open to all traffic and shall provide such maintenance as may be required to accommodate

traffic. The flagmen, and other traffic control devices in conformity with the Hawaii Administration Rules Governing the Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highways" adopted by the Director of Transportation, and the current U.S. Federal Highway Administration's "Manual on Uniform Traffic Control Devices for Streets and Highways" Part VI - Traffic Controls for Street and Highway Construction and Maintenance Operations, unless otherwise specified herein. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress and egress from abutting property or intersecting, roads, streets, or highways.

The Contractor shall make his own estimate of all labor, materials, equipment, and incidentals necessary for providing the maintenance of aircraft and vehicular traffic as specified in this subsection.

The cost of maintaining the aircraft and vehicular traffic specified in this subsection shall not be measured or paid directly, but shall be included in various contract items."

4.5 CONSTRUCTION AND MAINTENANCE OF DETOURS shall be amended to read as follows:

"The Contractor shall construct and maintain detours for the use, convenience and safety of public traffic. Unless indicated otherwise in the contract, all such work for the use, convenience and safety of public traffic shall be payable under the various pay items of the contract, such as for excavation; pavements; all signage, including directional, informational, regulatory and warning signs; lighting system; and pavement markers, striping and markings.

The Contractor shall maintain full illumination of the public roadways within the construction area at the Contractor's expense.

Detours or closures of facilities not specifically provided for in the contract (for passage of public traffic) to facilitate the Contractor's operations or detours used exclusively by the Contractor for hauling materials and equipment shall be constructed, maintained (including all appropriate signs), and removed by the Contractor at his expense. The Engineer will have authority to regulate the Contractor's hauling over such detour if such hauling, in the judgement of the Engineer, interferes with the free and safe passage of public traffic."

All signs shall be done professionally by a signage and graphics specialist who is able to demonstrate an experienced and completed track record satisfactorily to the Engineer. Prior to the installation of any signs, the Contractor shall submit shop drawings of the proposed signs to the Engineer for review.

4.7 ACCESS ROADWAY AND LIMITATION OF OPERATIONS is hereby added to the General Provisions.

"Access roadways to the facility will be provided by the State. Nothing contained in the contract shall be interpreted as giving the Contractor exclusive occupancy of the territory provided. When two or more projects are being constructed at one time in the same or adjacent areas in such manner that work on one project may interfere with that of another, the Director will decide which contractor shall have priority in the performance of his work.

When the territory of one project is the necessary or convenient means of access for the construction of another project, such privilege of access or any other reasonable privilege may be granted by the Director to the Contractor so desiring, to the extent, amount and in the manner and at the time permitted. No such decision as to the method or time of conducting the work or the use of territory shall be made the basis of any claim for delay or damage.

Lands to be furnished by the State for equipment storage, construction operations and other purposes, if any, will be specifically shown on the drawings or provided for elsewhere in the contract. Should the Contractor find it necessary or advantageous to use any additional land for storage area or other purposes during the execution of the work, he shall provide for the use of such lands at his own expense.

The Contractor shall conduct his work at all times in such a manner and in a sequence that will assure the least interruption with the public, other contractors, and tenants. Appropriate professionally produced informational signage shall be installed by the Contractor at his expense to inform the public of closures and detours.

The Contractor shall keep all personnel and equipment off the area not specifically designated for work under this contract. Whenever the Contractor's equipment is not in use, they shall be removed from the job site.

At the end of each working day, the Contractor shall assume liability for leaving his equipment and materials on the job site. The State shall not be responsible for any damage or loss of his equipment or materials in the area.

Failure on the part of the Contractor to abide by the above may result in suspension of work."

4.9 FIELD SURVEYS, INSPECTIONS AND TESTING is hereby added to the General Provisions:

"All field surveys required for construction stakeout and pay quantity measurements shall be paid for by the Contractor.

All testing services called for in the Contract documents

shall be provided by the Contractor, at no cost to the State, unless otherwise indicated within the various sections of the Contract specifications."

4.10 COVENANT OF GOOD FAITH AND FAIR DEALING is hereby added to the General Provisions:

- "A. This contract imposes an obligation of good faith and fair dealing in its performance and enforcement.
- B. The Contractor and the Department of Transportation, with a positive commitment to honesty and integrity, agree to the following mutual duties:
1. Each will function within the laws and statutes applicable to their duties and responsibilities.
  2. Each will assist in the other's performance.
  3. Each will avoid hindering the other's performance.
  4. Each will proceed to fulfill its obligations diligently.
  5. Each will cooperate in the common endeavor of the contract."

ARTICLE V - CONTROL OF WORK

5.2 PLANS AND WORKING DRAWINGS is amended by adding the following after the fourth paragraph:

"The Contractor shall also maintain at the job site one (1) copy of the specifications, addenda, approved shop drawings, change orders and other modifications in good order and marked to record all changes made during construction.

Revisions to the drawings may be made, and when deemed necessary by the Engineer during progress of the work, additional detailed drawings will be furnished to the Contractor. These additional drawings will be considered as forming part of the Contract.

The Contractor shall provide and maintain in good order a complete set of full-size blue line contract drawings. Actual location of work shall be clearly recorded as the work progresses including all changes to the contract and equipment size and type. Drawings shall be available at the site at all times for inspection.

The Contractor at his own expense, shall incorporate all field changes, Post Construction Document (PCD) Changes, etc. in a clearly legible manner utilizing the symbols of the Contract drawings onto the blue line contract drawings. All underground stubouts shall be dimensionally located from the building structure. At completion of all work under the contract, the

Contractor shall submit to the Engineer a set of Record Drawings, signed and dated."

5.4 FURNISHING AND COORDINATION OF PLANS AND SPECIFICATIONS

Delete the first paragraph in its entirety and substitute the following in lieu thereof:

"The specifications, project plans, special provisions and supplementary documents are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. The intent of the specifications, project plans, special provisions and supplementary documents is to complement, describe and provide for the complete work.

Unless otherwise directed by the Engineer, in case of conflict between contractual documents, the stricter requirement shall govern. If dimensional discrepancy occurs, calculated dimensions will govern over scaled dimensions."

Delete the second paragraph in its entirety and substitute the following in lieu thereof:

"The Contractor shall not take advantage of apparent errors or omissions in the contract. If the Contractor discovers such an error or omission, the Contractor shall notify the Engineer immediately. The Engineer will then make such corrections consistent with the intent of the contract."

5.5 COOPERATION BETWEEN CONTRACTORS Amend the first sentence in the second paragraph to read:

"When other State contracts and other than State contracts are let within the limits of any one project, . . ."

5.6 AUTHORITY AND DUTIES OF PROJECT ENGINEER Delete the first sentence in its entirety and substitute the following in lieu thereof:

"The engineer has immediate charge of the engineering details of each construction project."

5.7 DUTIES OF THE INSPECTOR Delete the second paragraph in its entirety.

5.10 MAINTENANCE OF THE WORK Add the following after the second paragraph:

"Due to the necessity that the Airport remain operational, the Contractor will be required to schedule his working hours in such manner as to minimize interference with movement of aircraft, passengers, service vehicles and vehicular and foot traffic as required and as may be directed by the Engineer.

The Contractor will not be granted any assistance by the State in obtaining preference ratings on construction equipment.

The Contractor must own, or have access to, sufficient equipment

to complete the project within the agreed time limit without the necessity for a preference rating to obtain additional units. The Contractor shall be responsible to adequately maintain all such equipment to the end of the project.

No equipment or construction materials may be parked or stored closer than 750 feet from active airport operation areas, namely runways, taxiways and aprons. Equipment working closer than this distance will require clearance from the Engineer and coordination with the FAA. No roadways shall be closed or opened, except by express permission from the Engineer.

If it is necessary to move equipment or large material in the airport operating area, it shall be escorted by an airport operations personnel, or radio contact with the Air Traffic Control Tower.

The Contractor shall control the generation of dust by his operation in construction zones, along haul routes and in equipment parking areas at all times. The control of dust may be accomplished by sprinkler water or by other methods as required.

There will not be separate payment for this item. The cost will be considered incidental to the price for the appropriate items.

In addition, the Contractor shall comply with all applicable standards, orders, or regulations passed pursuant to the Clean Air Act of 1970.

The Contractor shall suspend dust causing operations when dust control measures are inadequate. Work may be resumed by improving dust control methods or when dust does not affect airport operations. During very windy conditions, the Director may require the Contractor to suspend all dust causing operation and may limit his working hours.

The Contractor shall be liable for and shall indemnify the State and its Managing Consultant against any damage caused by dust arising out of the Contractor's negligent maintenance and control of dust.

Materials stored within the airport shall be so placed and the work shall, at all times, be so conducted as to cause no greater obstruction to the ground traffic than is considered necessary by the Director. No roadways shall be closed or opened, except by express permission of the State as obtained through the Director.

The Contractor shall keep all personnel and equipment off the areas which are not included in this construction, except as necessary to the performance hereunder.

During the performance of the work and upon termination or completion thereof and at the end of each working day, the Contractor shall remove all debris and waste resulting from his operations and keep and leave the site of work in satisfactory condition."

5.15 ENGINEERING WORK is hereby added to the General Provisions:

"The Contractor shall, subject to the approval of the Engineer, 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 on the plans or required in the progress of construction, unless otherwise noted in the specifications. The Contractor will be held definitely and absolutely responsible for any errors or faults in the work resulting from errors in engineering performed under the requirements of this contract to the entire satisfaction of the Engineer. Full compensation for the work shall be included in the prices paid for the various contract items of work. No additional allowance will be made for the correction of incorrect engineering work. The Engineer shall furnish the requisite reference points."

5.16 INDEPENDENT CONTRACTOR, SUPERINTENDENCE, AND EMPLOYEES is hereby added to the General Provisions:

"It is understood and agreed that the Contractor shall act as an independent Contractor in performing work under the contract, maintaining complete control over his employees and all of his subcontractors. The Contractor shall perform all work in accordance with his own methods subject to compliance with the contract. The Contractor shall perform all work in an orderly and workmanlike manner, enforce strict discipline and order among his employees and assure strict discipline and order by his subcontractors.

Before starting work, the Contractor shall designate a competent authorized representative to represent and act for the Contractor and shall inform the Engineer in writing of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for the Contractor, and shall specify any and all limitations of such authority. Such representative shall be present or be duly represented at the site of work at all times when work is actually in progress, and during periods when work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work which may be required. The Contractor's authorized representative shall be supported by competent assistants, as necessary, and the authorized representatives and his assistants shall be satisfactory to the Engineer. All directions, instructions, and other communications given to the authorized representative by the Engineer shall be construed as if given to the Contractor.

The Contractor shall be responsible for maintaining labor relations in such manner and by such methods as will provide for harmony among workmen, and, to the extent permissible under Federal and State laws, shall be bound by terms and provisions of the agreement creating the National Joint Board for Settlement of Jurisdictional Disputes, and the Contractor agrees that any decision or interpretation by such joint Board shall be



immediately accepted and complied with. The Contractor shall assure that his subcontractors of all tiers comply with the provisions set forth in this Section."

5.17 ACCESS TO THE WORK is hereby added to the General Provisions:

"The State, the Administrator, the Engineer, their duly authorized representatives and employees, and all duly authorized representatives of governmental bodies having jurisdiction of the work or areas or any part thereof shall at all times and for any purposes have access to the work and the premises used by the Contractor for the purpose of determining compliance with the contract requirements.

The Contractor shall also arrange for the State, the Administrator, the Engineer, and their said representatives and Employees, to have access at all times to all places where equipment or materials are being manufactured, produced, or fabricated for use under this contract. The Contractor and all of his subcontractors shall, whenever so requested, give the Engineer access to and copies of all purchase orders, all applicable drawings and specifications, invoices, bills of lading, and similar data, from which prices have been omitted. The Contractor shall, at his expense provide scales and assistance for weighing, or assistance for measuring any of the above items."

5.18 WAIVER OF CONTRACT PROVISIONS is hereby added to the General Provisions:

"None of the provisions of this contract shall be considered waived by the State unless such waiver is given in writing by the State. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of the contract unless expressly stipulated in such waiver."

5.19 DELIVERY OF NOTICE is hereby added to the General Provisions:

"Any written notice to be given to the Contractor by the State or the Engineer may be delivered to the Contractor's authorized representative on the site or mailed to the address given by the Contractor in his Proposal. Any written notice to be given to the State or the Engineer by the Contractor shall be mailed or delivered to the Engineer at the location where work is being performed."

5.20 ILLUMINATION OF WORK is hereby added to the General Provisions:

"When any work is performed at night or where daylight is shut off or obscured, the Contractor shall at his expense, provide artificial light sufficient to permit the work to be

carried on efficiently, satisfactorily and safely, and to permit thorough inspection. Lighting shall be installed so as not to cause glare or reflection to pilots of aircraft operating at the airport and to traffic controllers in the FAA Control Tower. The access to the place of work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a first-class manner, securely fastened in place, and shall be kept as far as possible from telephone wires and signal wires."

5.21 OPERATION OF AIRPORT FACILITIES DURING CONSTRUCTION is hereby added to the General Provisions:

"The General Contractor shall coordinate all phases of work under this contract with the Engineer to permit the continuing operation of all existing Airport facilities which will be affected by the performance of this contract.

For those construction activities which, in the opinion of the Engineer, will have a severe effect on Airport activities, the Engineer reserves the right to reschedule the work hours to non-standard work hours or to reschedule work time to a time period more convenient to Airport operations, with no additional cost to the State."

5.22 ENVIRONMENTAL PROTECTION is hereby added to the General Provisions:

Definition: With the exception of those measures set forth elsewhere in these specifications, environmental protection shall consist of the prevention of environmental pollution as the result of construction operations under this contract. For the purpose of this specification, environmental pollution is defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare, unfavorably alter ecological balances of importance to human life, affect other species of importance to man or degrade the utilization of the environment for aesthetic and recreational purposes.

Applicable Regulations: In order to provide for abatement and control of environmental pollution arising from the construction activities of the Contractor and his subcontractors in the performance of this contract, all work performed shall comply with the intent of all applicable Federal, State and local laws and regulations concerning environmental pollution control and abatement, including, but not limited to, the following regulations:

1. State of Hawaii, Department of Health, Title 11, Administrative Rules, Chapter 54, WATER QUALITY STANDARDS; Chapter 55, WATER POLLUTION CONTROL.
2. State of Hawaii, Department of Health, AIR POLLUTION CONTROL STANDARDS AND REGULATIONS.

3. State of Hawaii, Department of Health, NOISE CONTROL STANDARDS AND REGULATIONS.

Construction: The Contractor shall confine construction activities to areas defined by the drawings and specifications.

Noise Control: All construction equipment shall be equipped with suitable mufflers to maintain noise within levels complying with applicable regulations.

Dust Control: The Contractor shall take positive measures to ensure that dust is properly controlled. Chemical and/or oil treating shall not be used.

Erosion Control: Contractor shall provide any necessary temporary drainage, dikes, and similar facilities to prevent erosion damage to the site. Run-off shall be controlled to prevent damage to surrounding area.

Spillages: Care shall be taken to ensure that no petroleum products, bituminous materials, or other deleterious substances, including debris, are allowed to fall, flow, leach, or otherwise enter sewage systems or storm drains.

Burning: Will not be permitted on airport property.

Restoration of Landscape Damage: Any landscape feature scarred or damaged by the Contractor's equipment or operations shall be restored as nearly as possible to its original condition at the Contractor's expense.

Site Cleanup: The construction site shall be restored to its original condition and shall be left clean, free from all objectionable material and in a condition acceptable to the Engineer.

Payment: Any costs incurred in compliance with environmental protection shall be borne by the Contractor. No separate payment will be made to the Contractor for measures required by environmental controls during construction."

ARTICLE VI - CONTROL OF MATERIAL

6.5 SAMPLES, TESTS, CITED SPECIFICATIONS

Delete the second paragraph in its entirety and substitute the following in lieu thereof:

"Unless otherwise designated by the Engineer, all sampling and testing in accordance to the most current testing methods, as of the date of advertisement of bids, will be done at the Contractor's expense."

Add the following after the last paragraph:

"Wherever in the specifications there appears the statement, "color to be selected" or "colors shall be as selected," the Contractor shall accordingly submit samples showing such colors so as to expedite the preparation of a color schedule.

Any certificates for demonstrating proof of compliance of materials with specification requirements shall be executed in six (6) copies. Each certificate shall be signed by an authorized officer of the manufacturing company and shall contain the name and address of the Contractor, the project name and location, and the quantity and date or dates of shipment or delivery to which the certificates were sent and shall contain the name and address of the testing laboratory and the date or dates of the tests to which the report applies. Certification shall not be construed as relieving the Contractor from furnishing satisfactory material, if, after tests are performed on selected samples, the material is found not to meet the specific requirements.

If a submittal is returned for correction or is not satisfactory and is disapproved by the Engineer, the Contractor shall resubmit the corrected material in the same quantity, as specified for the original submittal, for approval within five (5) calendar days after receipt by him of the disapproved material."

6.9 UNACCEPTABLE MATERIALS - Add the following after the last sentence:

"No asbestos and PCB materials and/or products shall be allowed."

6.11 TRADE NAMES AND ALTERNATIVES

6.11(A.) QUALIFICATION BEFORE BID OPENING - is amended as follows:

In the last sentence of the first paragraph, replace the phrase "ten (10) days" with "fourteen (14) calendar days"

6.15 ORDERING OF MATERIALS AND EQUIPMENT is hereby added to the General Provisions:

"The Contractor shall be authorized for the procurement of materials and equipment upon the award of contract. He shall take the necessary measures in accordance with the applicable contract provisions to procure all long lead delivery items.

If the award of contract is rescinded for any reason, the Department will purchase such materials and equipment from the Contractor at cost. The cost shall include: costs of materials based on invoices, costs of transporting or delivering to the job site or location designated by the Engineer, and State Excise Taxes, but shall not include the Contractor's and/or Subcontractor's profit."

6.16 DISPOSITION OF MATERIAL is hereby added to the General Provisions:

"Waste: The Contractor shall dispose of all surplus excavation rubbish, debris, and refuse by hauling them off the Airport property at his own expense.

Stockpiles: When stockpiling of suitable excavated materials is necessary, the material shall be hauled and stored in an area authorized by the Engineer within the project site. No excavated material shall be stockpiled at any time in a manner that may endanger traffic, or that may in any other way be detrimental to the completed work, health or the operation of the airport."

ARTICLE VII - LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC

7.1 LAWS TO BE OBSERVED is amended as follows:

Add the following after the last sentence in the first paragraph:

"The Contractor shall be responsible for the compliance by subcontractors of all tiers with these provisions. It is understood and agreed by the Contractor and any subcontractor that they are responsible for maintaining security located within the project limits and will be fined \$1,000.00 per incident for any breach of security at these locations."

Delete the second paragraph amended by the Special Provisions in its entirety and substitute the following in lieu thereof:

"The Contractor shall hold harmless, indemnify, defend and where appropriate, insure the State, the Director, the Consultant, their directors, officers, representatives, 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 or either or both. If any discrepancy or inconsistency is discovered in the 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 Director in writing.

## 7.2 WAGES AND HOURS REQUIREMENTS

7.2(A) HOURS OF LABOR - Delete the first and second sentence of the fourth paragraph in its entirety and replace with the following:

"Should permission to work overtime, at night, weekends or on any holidays be granted by the Engineer, and the work requires overtime for the State's construction management consultant or State personnel as a result of the Contractor's scheduled work activities, the Contractor shall compensate the State's construction management consultant and State personnel for services involved. The compensation to the State's construction management consultant shall be at \$80 per hour multiplied by 1.5 for hours worked over 40 per week and multiplied by 2 for work on STATE holidays. Compensation for overtime work required by the State's construction management consultant and State personnel shall be made directly to the State."

Delete the second sentence of the fifth paragraph in its entirety and replace with the following:

"In any event, the Contractor shall not pay State employees and the State's consultants directly."

7.2(B) RATES OF WAGES - is amended by inserting the following paragraph preceding the last paragraph:

"The United States Department of Labor, pursuant to Part 152, Appendix:, H, of the Federal Aviation Regulations, and the State Director of Labor and Industrial Regulations, both have established minimum wage rate schedules for laborers and mechanics. Laborers and Mechanics shall be paid not less than the wages set forth on the applicable schedules. Both wage rate schedules shall apply, and the higher rates shall prevail. A copy of the U.S. Department of Labor Wage Rate Determination applicable to this contract is included in the Specifications

7.4 CITIZEN LABOR - Add the following after the first paragraph:

"However, under no circumstances shall the Contractor violate applicable Federal laws and regulations pertaining to alien labor and immigration labor certification."

7.10 SANITATION PROVISIONS - Delete in its entirety and substitute the following therefor:

7.10 SAFETY, SANITARY AND MEDICAL REQUIREMENTS - The Contractor shall, at his expense, promptly and fully comply with and carry out the safety, sanitary and medical requirements as set forth herein, as prescribed by Federal, State or local laws or regulations, and shall take such other measures as may be necessary to the end that proper work is done and that the safety and health of the employees and of the local communities is

safeguarded.

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety.

The Contractor shall provide backflow preventers at all temporary water hook-ups at the Contractor's expense.

The Contractor shall stress safe practices by his employees in all phases of construction and shall provide and enforce the use of such guards, helmets, goggles and other safety devices as may be required.

The Contractor shall maintain all portions of the work in a neat, clean and sanitary condition at all times. Toilets shall be furnished by the Contractor where needed, for use of employees on the work, and their use shall be strictly enforced.

The Contractor shall assure that his subcontractors of all tiers comply with all safety, sanitary and medical requirements as set forth herein without expense to the State.

The Contractor shall keep adequate first-aid personnel, facilities and supplies on the work and instruction in first-aid shall be given.

The Contractor shall assure that his subcontractors of all tiers comply with all safety, sanitary and medical requirements as set forth herein without expense to the State.

The Contractor shall designate a safety officer whose responsibility will be to monitor the Contractor's safety practices and procedures and to insure a safe working environment.

It shall not be the responsibility of the State or the Construction Management Consultant or its field representatives to review the adequacy of the Contractor's onsite safety measures or to check on the performance of the Contractor's safety officer."

7.11 PUBLIC CONVENIENCE AND SAFETY - Add the following after the first paragraph:

"The Contractor shall enforce safety requirements including, but not limited to, posting of signs to read to the effect that the working area is a hard hat area; also that there shall be no smoking in designated location or areas.

The Contractor shall be responsible for the protection of any new work and shall furnish watchmen in sufficient numbers as required. Failure to comply with this requirement will result in the Engineer shutting down the work until the Contractor shall have provided the necessary protection.

During the prosecution of this contract, any damage to airport property attributable to the Contractor shall be repaired by the Contractor at his own expense.

Located throughout the area are underground facilities (fuel, water, sewer, drainage and other utility lines).

Prior to starting any excavation work, the Contractor shall be responsible for examining the drawings which show the location of all known cables as well as underground facilities within the airport area; these drawings are on file in the Office of the Director. The Contractor shall be responsible for alerting all personnel and all subcontractors performing work within the project areas as to the existence and location of said cables and as to the necessity for avoiding any damage and/or disruptions of service. In the event that the Contractor should damage in any way any cable in the course of the accomplishment of the work under the terms of this contract, he shall be responsible for any charge that the Owner Agency involved might levy against the Contractor for work pertinent to the damaged cables.

Upon notification in writing from the Engineer, the Contractor shall take whatever action as necessary to repair damages. Should the Contractor fail to make repairs in an expeditious manner, the Engineer will make the necessary repairs and levy against the Contractor all charge therefor.

It shall be especially noted by the Contractor that the area directly adjacent to the existing in use runways and taxiways, is an extremely hazardous area and that very strict controls will apply throughout the entire period required to complete all work within 500 feet from the edge of an in use runway and 180 feet from the edge of an in use taxiway.

The Contractor shall keep all personnel and equipment off areas which are not included in this construction, except as necessary to the performance hereunder.

All systems proposed by the Contractor for lighting and barricading shall be submitted to the Engineer for approval prior to installation. The Contractor shall install all flags, lighting and barricades as requested by the Engineer. Equipment with beams, in particular cranes, shall be equipped with at least two working lights; a hazardlight shall be at the boom end. In addition, the Contractor shall provide adequate barricades appropriately flagged during hours of daylight and, at darkness, illuminated with electrical blinker lights. Fuel oil lights will not be acceptable.



Hauling of all materials must be done on roadways around present operating areas and under no circumstances will cross the airfield.

Only pneumatic tired vehicles may be used on public roadways, and they shall comply with the legal limits as set by the State Highways Division. The Engineer shall have the right to regulate the Contractor's hauling over existing roads, if necessary, to keep the roads in a condition satisfactory for public traffic. The Contractor must maintain roads used for hauling and shall so conduct his operations as to offer the least possible obstruction and inconvenience to traffic.

Spillage resulting from hauling operations along or across traveled ways shall be removed immediately. Where ordered by the Engineer, the Contractor shall install signs, lights, flares, barricades and other facilities for the sole convenience and direction of public traffic. Also, if directed by the Engineer, he shall provide and station competent flagmen for public traffic. There will be no separate payment for this item. The cost is to be included in the unit prices for the appropriate items as an incidental cost thereto.

Materials stored within the airport shall be so placed and the work shall, at all times, be so conducted as to cause no greater obstruction to the air and ground traffic than is considered necessary by the Engineer. No roadways shall be closed or opened, except by express permission of the State as obtained through the Engineer.

The Contractor shall familiarize himself with the Airport Certification Manual available for review at the Airport Manager's Office and shall comply with its requirements.

The Contractor is responsible for the security of access points to the Airport Operational Area that are located within the limits of construction and will be fined \$1,000 per incident for any breach of security at these locations. All gates leading into the AOA shall be kept locked and if required to be open, the Contractor shall provide professional security guards to attend gates. The guards must be approved by the Director and shall be required to attend a training session conducted by the Airport Manager prior to gate assignment.

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

7.14 PROTECTION AND RESTORATION OF PROPERTY - Add the following after the first paragraph:

"The Contractor shall not cut any existing structures without prior written approval, unless cutting is specifically detailed. Should such cutting be necessary or required, it shall be done so as not to damage the structure. All such cutting shall be repaired so that surfaces are restored to their original finish, texture, and color. All such repairs shall be subject to

approval."

7.15 RESPONSIBILITY FOR DAMAGE amended by the Special Provisions is deleted in its entirety and the following substituted therefor:

"The Contractor shall hold harmless, indemnify, defend and where appropriate, insure the State, the U.S. Government, its officers and employees, and the State's consultant for this project separately, and not jointly, from all suits, actions, or claims of any character brought because of any injuries to or damages sustained by any person, persons, or property on account of (1) the operations of the Contractor; (2) the negligence of the Contractor in safeguarding the work; (3) the use by the Contractor of unacceptable materials in constructing the work; (4) any omission, neglect, or misconduct of said Contractor; (5) any claims or accounts recovered for any infringements of patent, trademarks, or copyrights; and (6) any claims or amounts arising or recovered under the 'Workmen's Compensation Act,' or any other law, ordinance, order, or decree. The money due the Contractor under the contract as may be considered necessary by the State for such purpose may be retained for the use of the State. If no money is due, the Contractor's surety may be held until all suits, actions and claims for injuries or damages shall have been settled and suitable evidence to that effect furnished to the State. Money due the Contractor will not be withheld under this section if the Contractor submits satisfactory evidence that he is adequately protected by public liability and property damage insurance.

It is not the intention of the parties to this contract to make the public or any other member thereof a third party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injuries or property damage based on a contract theory of liability. In any event, the Contractor shall hold harmless, indemnify, defend and where appropriate, insure the State, the U.S. Government, its officers and employees and the State's consultants for this project separately, and not jointly, from suits and claims for personal injuries or property damage where such injuries or damage are caused by the negligent acts or omissions of the Contractor, its agents or employees. Contractor understands that the relationship of the State's consultants for this project to the State is that of independent contractor, and not as employee."

7.17 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES Add the following after the fourth paragraph:

"Information respecting 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.

The Contractor, at their cost, shall locate all utilities by records research, toning, probing and other methods before cutting, drilling and excavating.

Any utilities that the Contractor encounters during the progress of the work, such as telephone ducts, electric ducts, ventilation and air conditioning ducts and equipment, water lines, sewer lines, electric lines and drainage pipes, whether or not shown on the contract drawings, shall not be disturbed or damaged unless otherwise instructed in the plans and specifications.

In the event utilities are damaged or disturbed by the Contractor, the Contractor shall be held liable for the damaged or disturbed utilities whether or not shown on the contract drawings, located and exposed on the job as it progresses, or pointed out to the Contractor in the field.

The Contractor shall repair any damaged or disturbed utilities at no cost to the State. Any damage claims due to the disruption of service caused by the utilities being damaged shall be paid by the Contractor who shall hold harmless the State from all suits, actions or claims of any character brought on account of such damages.

Utilities which must be relocated due to construction and not so indicated in the plans and specifications shall be considered to be additional work as covered by Subsection 4.3 - EXTRA WORK. The Contractor shall not in any case, if he encounters underground utilities, proceed with any work until he has notified the Engineer.

The Contractor shall have available on 24-hour call sufficient specialty contractors, such as electrical and plumbing contractors, to repair any damage to existing facilities that might occur as a result of construction operations regardless of when the damage might occur.

Outage: Written requests for power outage, communication changes, and water and sewer connection outages shall be submitted to the Engineer at least seven (7) days in advance or as specified in other sections of these specifications.

Outages will be restricted to non-peak operational hours between midnight and 6:00 a.m."

#### ARTICLE VIII - PROSECUTION AND PROGRESS

8.3(B) INSURANCE AND TAX RATES FOR: shall be deleted in its entirety and the following substituted therefor:

"B. Insurance and Tax Rates for:

(1) Workers' compensation;

- (2) State unemployment insurance;
- (3) Federal unemployment insurance;
- (4) Social Security;
- (5) Public liability, including personal injury and property damage.

Such insurance and tax rates when accepted by the Director in writing shall become applicable and shall remain unmodified throughout the entire term of the contract. All insurance aforementioned shall cover the additional insured 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 submission and approval of insurance certificates and progress schedule shall not be a cause for delay in the issuance of a notice to proceed, the commencement of work, or an extension of time in the completion of the contract.

Failure to obtain insurance in accordance with this Section on the part of the Contractor shall be considered a major breach of the contract and should the State be forced to expend funds which would have been covered under the insurance, the Contractor agrees to assume the liability for such funds and to indemnify and hold the State harmless.

The foregoing requirements as to the types, limits and the State's approval of insurance coverage to be maintained by the Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the contract."

8.4 LIMITATION OF OPERATIONS: Add the following after the first paragraph:

"The following limitations shall be observed by the Contractor when operating within 75 feet from the edge of any taxiway.

General - The Contractor shall schedule his operations to minimize interference with the movement of aircraft or passengers as may be required by the Engineer. The Contractor shall be responsible to alert all of his personnel to the location of power and signal cables installed for the operation of the airport. The Contractor shall control his operations in a manner to preclude any possible damage to those cables. Utility companies shall be notified by the Contractor one week before commencement of work. The Contractor shall give notice to the Engineer in writing, at least 168 hours before operating within 75 feet from the edge of any taxiway and the Engineer will assure himself that the Control Tower personnel are notified in sufficient time to publish the warning (NOTAM). The Contractor

shall immediately repair any damages to the existing perimeter fence to prevent inadvertent entry to the Airport Operation Area (AOA).

Work in Vicinity of Runways and Taxiways in Use - Under the terms of this contract, it is intended that work shall be completed without disturbing the paved surface of existing runways and taxiways, unless shown otherwise on the plans. Aircraft traffic shall not be interrupted. The Contractor shall schedule to work within 75 feet of the taxiway as directed by the Control Tower. No ruts, holes, or open trenches of 3 inches or more in depth and no objects or material 3 inches or more in height shall be permitted within the safety area when the airfield is in operation in conformance to Federal Aviation Regulation Part 139. The Contractor is also informed that Airport Zoning Regulations dictate that a 'clear zone' be maintained 500 feet on each side of an active runway, to be known as a hazardous area. The Contractor shall comply with all regulations governing ground operations within hazardous areas. The following FAA Advisory Circulars and FAA Regulations specify these requirements:

AC 150/5210-5B Painting, Marking, and Lighting Vehicles  
Used on an Airport

AC 150/5340-1H Standards for Airport Markings

AC 150/5370-2C Operational Safety on Airports During  
Construction, dated 5/31/84

FAA Regulations Objects Affecting Navigable Airspace  
Part 77

The Contractor shall keep all personnel and equipment off the areas not specifically designated for work under this Contract. At all times when the Contractor's equipment is not in use, the equipment shall be moved outside the hazardous areas to an area designated by the Engineer. Under no condition shall equipment be parked or material stored within the hazardous areas.

Failure on the part of the Contractor to abide by the above will result in suspension of work.

Authority of Control Tower Personnel - With the exception of actual construction methods, the airport control tower personnel will have full authority to control the Contractor's movements within the existing Airport area. When required, the Contractor shall maintain a constant radio vigil within all work areas and in addition shall keep at least one flagman on duty with the radio man. When notified by the control tower to temporarily halt operations, it shall be the duty of the flagman, through the use of appropriate methods (lighted flares shall not be used under any circumstances), to notify all operators of equipment and other personnel to cease work and move men and

equipment off of hazardous areas.

Contractor shall provide, at his own expense, the necessary radio and equipment including a radio equipped mobile vehicle to maintain contact with control tower personnel at all times during job performance. A transceiver operating at a frequency designated by the Engineer to communicate with the Control Tower.

Marking of Hazardous Areas - The Engineer will designate areas that are hazardous for aircraft. The Contractor shall provide yellow blinker lights spaced not more than 50 feet apart around all hazardous areas and areas of work within 75 feet of any taxiway. Such systems shall be subject to approval by the Engineer. The Contractor shall have personnel on call 24 hours per day for the emergency maintenance of hazard markings.\

The Contractor shall provide red flags not less than 20 inches square in addition to the yellow blinker lights. When danger flags are made of fabric, a wire stiffener shall be used to hold the flags in an extended position. Flags shall be so mounted that they do not produce a hazard. The red danger flags shall be spaced not more than 50 feet apart around all areas of work within 75 feet of any taxiway.

All systems proposed by the Contractor for lighting and barricading shall be submitted to the Engineer for review prior to installation. The Contractor shall install all flags, lighting and barricades as required by the Engineer. Such systems shall be subject to approval by the Engineer.

Storage of Equipment and Materials - At the end of each working shift, all of the Contractor's equipment shall be withdrawn to an area designated by the Engineer. The Contractor shall park all equipment in an orderly fashion and place a sufficient number of red flasher lights to identify these areas. Materials stored within the airport shall be so placed and the work shall, at all times, be so conducted as to cause no greater obstruction to the air and ground traffic than is considered necessary by the Engineer. No runways, taxiways or roadways shall be closed or opened, except by permission of the Engineer.

Blasting Operations - The Contractor shall notify the Engineer at least three (3) days before performing blasting operations as to the extent and timing of such operations, so that the Control Tower and other concerned parties can be informed.

Utilities - The Contractor shall provide for the protection of all utilities from damages in areas to be traversed by his vehicles and equipment. If required, buried cables and utility lines shall be protected by mounding earth over the cables or by any other method approved by the Engineer.

The Contractor shall notify representatives of the owner, agencies, and other affected organizations at least 48 hours prior to working in any area containing the facilities of these organizations.

Failure to notify the owning organization will prevent authorization to work in a specific area.

Archaeological Features - Any archaeological features such as petroglyphs, burial sites, and artifacts discovered or unearthed during the performance of the work shall immediately be brought to the attention of the Engineer and all work that would damage or destroy these features shall be discontinued. The Engineer will decide, after proper investigation, to salvage or abandon such artifacts."

8.5 CHARACTER OF WORKMEN, METHODS AND EQUIPMENT is amended by adding the following after the sixth paragraph:

"Prior to the commencement of any work in critical or hazardous areas, the Contractor shall submit to the Engineer a list of all equipment he intends to utilize within these areas; said list shall in particular denote the maximum working height of the equipment when measured from ground level; in the case of cranes, this height shall be measured with the boom raised to its highest peak."

8.7 DETERMINATION AND EXTENSION OF CONTRACT TIME is amended by inserting the following paragraph between the third and fourth paragraphs:

"Whenever the Contractor has knowledge that an actual labor dispute is delaying or threatens to delay the timely performance of this contract, he shall immediately give notice thereof to the State. Such notice shall include all relevant information with respect to the dispute."

8.11 UTILITIES is hereby added to the General Provisions.

"The Contractor shall, at his expense, arrange for, develop and maintain all utilities, including but not limited to water, electric power, sewage disposal and telephone communications, in the work areas which he deems necessary to meet the requirements of the work under the contract. The State may allow the Contractor to use their water and available electrical power; however, the contractor shall provide its own backflow preventer for any temporary water connections. The Contractor must maintain control and responsible use for duration of the project or be subject to their loss of use."

8.12 FIRE PROTECTION is hereby added to the General Provisions.

"The Contractor shall not permit unauthorized fires either within or adjacent to the limits of the work and he shall be liable for all damage from fire due directly or indirectly to his own activities, or those of his employees or of his subcontractors or their employees. The Contractor shall comply with all Federal, State and local laws and regulations and all instructions of authorized personnel, pertaining to burning, fire prevention and control within or adjacent to the work. A copy of each required permit shall be furnished to the Engineer."

8.14 STANDARDS AND CODES is hereby added to the General Provisions.

"Wherever references are made in the contract to the respective standards, specifications and advisory circulars in accordance with which work is to be performed or tested, it is to be understood that the edition or revision of the standards, specifications and advisory circulars in effect on the date of the bidder's proposal shall apply unless otherwise expressly set forth in the contract. Unless otherwise specified, reference to such standards is solely for technical information.

In case of conflict among any such referenced standards and codes or between any such standard(s) or code(s) and the requirements of the Contract, the stricter requirement shall govern."

8.15 DELAYS AND EXTENSION OF TIME is hereby added to the General Provisions.

"If the Contractor should be delayed at any time in the progress of his work by an act, omission or neglect of the State, or its representatives, or by acts of the public enemy, or by a war in which the United States of America is a participant, or by earthquakes affecting the site of any work, or by area wide strikes, fire, unusually severe weather, volcanic eruption, epidemics, quarantine restrictions or any unforeseeable cause beyond the control and without the fault or negligence of the Contractor, the Contractor shall file with the Engineer a written request for an extension of the Contract period for the portion of work so delayed and shall fully state the reasons for such delay. When such request is received, the Engineer will ascertain the reasons for and the extent of such delay, if any, and so inform the State. If the State determines that the facts justify an extension of time, such an extension will be granted in writing to the Contractor and the Contractor shall revise the Progress Schedule to reflect such extension. If the State determines that the facts do not justify an extension of time, such request of the Contractor will be denied. The State's findings of fact for either determination will be mailed to the Contractor and shall be final and conclusive on the parties hereto. Requests for time extension must be made in writing to the Engineer within seven (7) calendar days of the occurrence.



No exceptions will be made. In the case of a continuing cause of delay, only one request is necessary."

8.16 OPTIONAL TERMINATION is hereby added to the General Provisions.

"The State may, at its option, cancel and terminate the contract in whole or from time to time in part at any time by written notice thereof to the Contractor, whether or not the Contractor default. Upon any such cancellation and termination the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, but as the sole right and remedy of the Contractor and the State, the State shall pay the Contractor in accordance with subparagraph B below, provided however, that the provisions of the contract, which by their very nature survive final acceptance under the contract, shall remain in full force and effect after such cancellation and termination to the extent provided in such provisions.

A. Upon receipt of any such notice, the Contractor shall, unless the notice requires otherwise:

1. Immediately discontinue work on the date and to the extent specified in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be required for completion of such portion of work under the contract as is not terminated;
3. Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to the State of all orders and subcontracts to the extent they relate to the performance of work terminated; and
4. Assist the State as specifically requested, in writing, in the maintenance, protection and disposition of property acquired by the State under the contract.

B. Upon any such termination, the State will pay to the Contractor an amount determined in accordance with the following (without duplication of any item):

1. All amounts due and not previously paid to the Contractor for work completed in accordance with the contract prior to such notice, and for work thereafter completed as specified in such notice.
2. The cost of settling and paying claims arising out of the termination of work under subcontracts or order as provided in subparagraph A.3 above.
3. The reasonable costs incurred pursuant to subparagraph A.4 above.

4. Any other reasonable costs incidental to such termination of work.
5. The foregoing amounts shall include a reasonable sum, under all of the circumstances, as profit for any work performed."

8.17 OPERATION OF CONTRACTOR'S MOTOR VEHICLE AND PERSONNEL IN RESTRICTED AIR OPERATIONS AND MOVEMENT AREAS is hereby added to the General Provisions:

"The Contractor shall conform with the all sections of the "State of Hawaii, Department of Transportation, Airports Division, Contractor's Training Guide" pertaining to access and operation in the Airport Operation Area (AOA) hereinafter described as follows:

"A. Motor Vehicles in Airport Operation Area

For safety reasons, the operation of motor vehicles in the AOA must conform with all applicable State Airport rules and regulations."

B. Motor Vehicle Access Permit

Each motor vehicle operated in the AOA is required to:

1. Meet all State licensing registration and safety requirements and be specifically licensed for operation in the AOA.
2. Meet all insurance requirements.
3. Be restricted to operation by those persons qualified to drive the vehicle and in possession of a current Ramp Driver's License and applicable Motor Vehicle Operator's License.

C. The operators of motor vehicles in the AOA shall be responsible for meeting the following insurance requirements.

1. Licensed Vehicles

As a condition for authorization to enter the AOA, the Contractor shall provide evidence of vehicle liability insurance in the form of a Certificate of Insurance issued by an authorized insurance carrier. Automobile Liability and general Liability (combined single limit, Bodily Injury and Property Damage, per occurrence) shall be required in the applicable minimum limits specified below:

a. Honolulu International Airport

- (1) Standard AOA clearance....\$5,000,000
- (2) Limited AOA clearance.....\$1,000,000  
 Limited AOA clearance is defined as operations restricted to Diamond head and Ewa Concourses second level roadways and connecting third level main terminal roadway only, with entry and exit via Security Access Point "C" (Primary) and Access Point "A" (Secondary)

b. Other Airports

Standard AOA clearance.....\$1,000,000  
 Standard AOA clearance is defined as any portion of a public Airport from which the public is restricted by fences or appropriate signs and not leased or demised to anyone for exclusive use and shall include runways, taxiways, all ramp and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of a public Airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft or used for embarkation or debarkation of passengers.

2. Unlicensed Vehicles

Airport Liability (or General Liability) shall be required in the applicable minimum limits specified below:

a. Honolulu International Airport, Kahului Airport and Kona International Airport at Keahole

AOA clearance.....\$5,000,000

b. All other Airports

AOA clearance.....\$1,000,000

- 3. Specifically name the State of Hawaii as additionally insured.
- 4. Indicate that the Airport Engineer will be provided with a 30-day written prior notice of policy cancellation or material change in coverage or conditions.

D. Operator's Permit

- 1. No person shall operate a motor vehicle on the AOA unless he holds and carries on his person a current

Airport Motor Vehicle operator's permit issued by the State of Hawaii, Department of Transportation, Airports Division.

2. Operator's permits will only be issued to persons who apply through the Airport District Security Office and pass a written exam covering those portions of the Airport Rules and Regulation relating to the operation of vehicles in Airport Operations Areas.

E. Authorized Vehicles

1. Only vehicles considered operationally safe and necessary for the performance of this contract may be allowed to operate in the AOA.
2. All motor vehicles must be painted in such a manner so as to be easily identifiable and must carry the Contractor's name on each side. These signs may be of a temporary nature applied to the side windows or doors.

The lettering shall be in bold characters of a minimum of four (4) inches in height and one and one-half (1-1/2) inches in widths, the height of logos should be a minimum of six (6) inches.

3. The Contractor's operations on, over, across, and/or immediately adjacent to any runway and/or taxiway at a towered airport shall require the use of two-way radio communication. The Contractor shall obtain the necessary equipment at his own expense.
4. No person shall operate a motor vehicle on the AOA unless he holds and carries on his person a current Motor Vehicle Operator's Permit issued by the Airport Manager.
  - a. The Motor Vehicle Operator's Permit will be issued only to persons who apply through the Airport Security Section and pass a written exam covering those portions of the Airport Rules and Regulations relating to the operation of vehicles in the AOA.
  - b. Permits issued may be suspended or revoked for cause at any time by the Airports Division.

F. Airport Operation Area Construction Pass

1. Issuance of Airport Operation Area (AOA) Construction Passes shall be limited to contractors, subcontractors, companies, organizations, individuals engaged in authorized and approved construction activity which requires a continuing

need for entry into the AOA or Airfield Movement Areas. Request letters for such passes must be made to the Airport District Manager's Office in accordance with the Contractors Training Guide or applicable District requirements.

2. As a condition for security area clearance, applicants must comply with Federal Aviation Regulations (FAR) 107.11(F) which requires a ten-year background employment verification for those individuals employed under this contract. Background check records shall be maintained by the Contractor during the course of the work and shall contain the name, address, social security number, and his previous employment and the person(s) contacted to verify such employment. The records shall be made available for inspection by the State.

G. Access to Movement Areas

1. Movement areas shall mean all of the runways and taxiways of the Airport which are utilized for taxiing, takeoff, and landing of aircraft.
  - a. Any vehicle which requires access to the movement area shall be equipped with operational radio equipment capable of positive two-way contact with Tower Ground Control.
  - b. Operators of vehicles in movement areas must possess knowledge and familiarity with restricted and airfield movement areas, operational rules, regulations, and procedures, or be under direct escort by individuals meeting all of the above requirements.
2. Vehicle Operations on Movement Areas
  - a. No vehicle shall proceed across any runway unless specifically cleared by Tower Ground Control.
  - b. The operator of a vehicle in the movement area shall not leave his vehicle unless continuous radio contact is maintained with the Tower Ground Control while he is away from his vehicle.
  - c. Any vehicle proceeding onto the movement area between the hours of sunset and sunrise shall be equipped with an overhead flashing light which is visible for one (1) mile, unless such vehicle is being escorted by another vehicle so equipped.

- d. All vehicles operated on the movement area between sunrise and sunset except those being escorted, shall either be painted a bright color; e.g., international orange, white, yellow; operate an overhead amber or red flashing beacon visible for at least one (1) mile; or display a flag at least three (3) feet square with orange and white checkered squares of not less than one (1) foot on each side.

#### H. Runway and Taxiway Closure

1. Requests for runway or taxiway closures, or for any work which affect operational conditions at the airport must be made in writing through the Airport Engineering Branch.
2. Temporarily closed runways require placement of yellow "X" markings (constructed of material such as fabric or plywood or other acceptable material) on top of the runway identification numerals at both ends of the closed runway.
3. Taxiway closures require placement of barricades with alternate orange and white markings at each end of the closed taxiway segment. Barricades must be supplemented with orange flags which measure a minimum of 20 x 20 inches (50 by 50 cm) square and made to be installed in the extended position.

Closures which extend through the hours of darkness must include barricades which are supplemented with flashing amber lights. The intensity of the lights and spacings for barricades, flags, and lights must adequately define and delineate the hazardous area.

#### I. Gate Guards Furnished by Contractors

1. If a contractor is permitted by the airport to maintain operational control of an AOA Access Gate, entry through such gate shall be controlled by the posting of a gate guard.
  - a. Written instruction will be provided, outlining the guard's duties to enforce those requirements and provisions prescribed by the airport's security program to include all personnel and vehicle entry and access requirements.
  - b. Procedures will be established to identify the actions which will be undertaken by the guard in calling for assistance.
  - c. An approved emergency communications procedure will be established.

J. Compliance

1. The contractor shall comply with all regulations and rules governing the Air Operations Areas during construction, as specified in:
  - a. Hawaii Revised Statutes, Title 19, Administrative Rules for Public Airports.
  - b. Federal Aviation Administration Advisory Circular AC 150/5340 1H, Standards for Airport Markings; AC 150/5370-2C, Operational Safety on Airports During Constructions.

K. Enforcement Authorization

Act 21, Section 1, Section 261-17(a), HRS; Federal Aviation Administration Regulations, Part 139, Part 107.

L. Right of Rejection or Revocation

The State of Hawaii, Airports Division, reserves the right to withhold, deny or revoke any airport security clearance, licenses or permits to any individual or organization who fails to meet the prescribed or required access area clearance criteria to include background investigation information, or fails to observe or comply with established rules, regulations, and directives.

It should be clearly understood that such denial or revocation is based solely on airport security or safety considerations and does not in any way constitute a determination by the State with regard to private employment by any individual or organization."

ARTICLE IX - MEASUREMENT AND PAYMENT

9.7 PAYMENT FOR MATERIALS Delete the fourth paragraph in its entirety and substitute the following:

"Payment for materials under this Section will not be made unless a proof of payment for the materials is submitted to the Engineer."

9.8 PROGRESS PAYMENT Delete the first sentence and substitute the following in lieu thereof:

"Prior to application for the first progress payment under the contract, the Contractor shall submit to the Engineer a complete detailed schedule of values of the various divisions and subdivisions of the work entering into the contract. Such form, as may be approved by the Engineer, shall be used to determine the monthly progress payment estimate and shall aggregate the total contract price."

9.13 PAYMENT FOR UTILITY ALLOWANCES is hereby added to the  
General Provisions:

"If the proposal includes utility allowance items, the Contractor shall be reimbursed for actual utility charges from the utility allowance amounts. The bidder shall not add overhead, profit, taxes, etc. into those proposal items."

- END OF SECTION -



## SUPPLEMENTAL SPECIAL PROVISIONS

The General Provisions are further amended as follows:

A. ARTICLE VIII - PROSECUTION AND PROGRESS is amended as follows:

1. Section 8.1 Subcontracting is amended by adding the following after the third Paragraph:

"The Specialty Items of work for this project are as follows:

- Abatement
- Carpentry
- Concrete
- Demolition
- Roofing
- Waterproofing (epoxy floor)

## **Requirements of Chapter 104, HRS**

### **Wages and Hours of Employees on Public Works Law**

---

Chapter 104, HRS, applies to every public works construction project over \$2,000, regardless of the method of procurement or financing (purchase order, voucher, bid, contract, lease arrangement, warranty).

#### **Rate of Wages for Laborers and Mechanics**

- Minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the Director of Labor and Industrial Relations and published in wage rate schedules, shall be paid to the various classes of laborers and mechanics working on the job site. [§104-2(a), (b), Hawaii Revised Statutes (HRS)]
- If the Director of Labor determines that prevailing wages have increased during the performance of a public works contract, the rate of pay of laborers and mechanics shall be raised accordingly. [§104-2(a) and (b), HRS; §12-22-3(d) Hawaii Administrative Rules (HAR)]

#### **Overtime**

- Laborers and mechanics working on a Saturday, Sunday, or a legal holiday of the State or more than eight hours a day on any other day shall be paid overtime compensation at one and one-half times the basic hourly rate plus the cost of fringe benefits for all hours worked. [§§104-1(5), 104-2(c), HRS]

#### **Weekly Pay**

- Laborers and mechanics employed on the job site shall be paid their full wages at least once a week, without deduction or rebate, except for legal deductions, within five working days after the cutoff date. [§104-2(d), HRS]

#### **Posting of Wage Rate Schedules**

- Wage rate schedules shall be posted by the contractor in a prominent and easily accessible place at the job site. A copy of the entire wage rate schedule shall be given to each laborer and mechanic employed under the contract, except when the employee is covered by a collective bargaining agreement. [§104-2(d), HRS]

#### **Withholding of Accrued Payments**

- If necessary, the contracting agency may withhold accrued payments to the contractor to pay to laborers and mechanics employed by the contractor or subcontractor on the job site any difference between the wages required by the public works contract or specifications and the wages received. [§104-2(e), HRS]

#### **Certified Weekly Payrolls and Payroll Records**

- A certified copy of all payrolls shall be submitted weekly to the contracting agency.
- The contractor is responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates listed are not less than the applicable rates contained in the applicable wage rate schedule, and that the classifications for each laborer or mechanic conform with the work the laborer or mechanic performed. [§104-3(a), HRS]
- Payroll records shall be maintained by the contractor and subcontractors for three years after completion of construction. The records shall contain:
  - the name and home address of each employee
  - the employee's correct classification
  - rate of pay (basic hourly rate + fringe benefits)
  - daily and weekly hours worked
  - weekly straight time and overtime earnings
  - amount and type of deductions
  - actual wages paid
  - date of payment
- Records shall be made available for inspection by the contracting agency, the Department of Labor and Industrial Relations, and any of its authorized representatives, who may also interview employees during working hours on the job. [§104-3(b), HRS]

**Termination of Work on Failure to Pay Wages**

- If the contracting agency finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has not been paid prevailing wages or overtime, the contracting agency may, by written notice to the contractor, terminate the contractor's or subcontractor's right to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid. The contracting agency may complete this work by contract or otherwise, and the contractor or contractor's sureties shall be liable to the contracting agency for any excess costs incurred. [§104-4, HRS]

**Apprentices and Trainees**

- In order to be paid apprentice or trainee rates, apprentices and trainees must be parties to an agreement either registered with or recognized as a USDOL nationally approved apprenticeship program by the Department of Labor and Industrial Relations, Workforce Development Division. [§12-22-6(1), HAR]
- The number of apprentices or trainees on any public work in relation to the number of journeyworkers in the same craft classification as the apprentices or trainees employed by the same employer on the same public work may not exceed the ratio allowed under the apprenticeship or trainee standards registered with or recognized by the Department of Labor and Industrial Relations. A registered or recognized apprentice receiving the journeyworker rate will not be considered a journeyworker for the purpose of meeting the ratio requirement. [§12-22-6(2), HAR]

**Enforcement**

- To ensure compliance with the law, DLIR and the contracting agency will conduct investigations of contractors and subcontractors. If a contractor or subcontractor violates the law, the penalties are:
  - First Violation Equal to 10% of back wages found due or \$25 per offense, whichever is greater.
  - Second Violation Equal to amount of back wages found due or \$100 for each offense, whichever is greater.
  - Third Violation Equal to two times the amount of back wages found due or \$200 for each offense, whichever is greater; and  
Suspension from doing any new work on any public work of a governmental contracting agency for three years.
- A violation would be deemed a second violation if it occurs within two years of the **first notification of violation**, and a third violation if it occurs within two years of the **second notification of violation**.
- Suspension. For a first or second violation, the department shall immediately suspend a contractor who fails to pay wages or penalties until all wages and penalties are paid in full. For a third violation, the department shall penalize and suspend the contractor as described above, **except that if the contractor continues to violate the law, then the department shall immediately suspend the contractor for a mandatory three years. The contractor shall remain suspended until all wages and penalties are paid in full.** [§§104-24, 104-25]
- Any contractor who fails to make payroll records accessible or provide requested information within 10 days, or fails to keep or falsifies any required record, shall be assessed a penalty as provided in Section 104-22(b), HRS. [§104-3(c)]
- If any contractor interferes with or delays any investigation, the contracting agency shall withhold further payments until the delay has ceased. Interference or delay includes failure to provide requested records or information within ten days, failure to allow employees to be interviewed during working hours on the job, and falsification of payroll records. The department shall assess a penalty of \$1,000 per project, and \$100 per day thereafter, for interference or delay. [§104-22(b)]

For additional information, visit the department's website at <http://dlir.state.hi.us/> or contact any of the following DLIR offices:



|                                      |          |
|--------------------------------------|----------|
| Oahu (Wage Standards Division) ..... | 586-8777 |
| Maui .....                           | 243-5322 |
| Hilo .....                           | 974-6464 |
| West Hawaii .....                    | 322-4808 |
| Kauai.....                           | 274-3351 |

***PART II: TECHNICAL PROVISIONS & PLANS***

## SECTION 01 00 00

### GENERAL REQUIREMENTS

#### PART 1 - GENERAL

##### 1.1 DESCRIPTION

The General Provisions of the Contract, including General and Special Provisions and General Requirements of the Specifications, apply to the work specified in this Section.

##### 1.2 LOCATION AND DESCRIPTION OF WORK

###### A. Location of Work.

The work to be performed under this contract is located at Honolulu International Airport at Honolulu, Oahu, Hawaii.

###### B. General Description of Work

The work to be performed under this contract consists of furnishing and installing all materials and providing all labor, equipment, tools and incidentals necessary and required to execute the scope of work shown on the attached project plans.

###### C. Drawings Furnished to Contractor

The project plans are bound separately and are made a part of this contract.

The drawings show conditions as they are believed by the State to exist, based upon interpretation of field observations or "As Built" plans. It is not intended nor to be inferred that the conditions as shown thereon constitute a representation by the State or its agents, that such conditions are actually in existence, nor shall the Contractor be relieved of the liability under this Contract, nor shall the State nor any of its agents be liable, for any loss sustained by the Contractor as a result of any variance between conditions as shown on the drawings and the actual conditions revealed during the progress of work or otherwise. Revisions of the above listed drawings may be made, and when deemed necessary by the State during progress of the work, additional detailed drawings will be furnished to the Contractor. These additional drawings will be considered as forming part of this Contract.

#### PART 2 - PRODUCTS

LOT J: Electrical Vault Repairs

State Project No. HNL-2017-OME-04

General  
Requirements

01 00 00-1

Not Used.

## PART 3 - EXECUTION

### 3.1 CONTROL OF WORK

#### A. Work Days

Work days shall be Monday through Friday.

#### B. Work Hours

Major work hours shall be 7:00 a.m. to 3:30 p.m., 5 days a week Monday through Friday, excluding State Holidays and furloughs, or as approved by the Project Manager. Work can be performed at the construction site at anytime over a 24-hour period without considerable disruption to airport operations or other adjacent tenants.

#### C. Project Access

Contractor shall be responsible for securing security clearance via Airport Operating Area (AOA) badges for each person engaged in this project. Vehicles shall be cleared and registered via AOA sticker. Project access shall be determined by the State.

#### D. Smoking

There shall be absolutely no smoking within the project site by the Contractor and his personnel.

### 3.2 SAFETY

A. The Contractor shall at his expense, promptly and fully comply with and carry out safety, sanitation and medical requirements as prescribed by Federal State, and Local laws, rules and regulations, and shall take such other measure as may be necessary to the end that proper work is done and that the safety and health of the employer and all other personnel are safeguarded.

B. Barricades, warning signs and blinkers shall be erected by the Contractor in the work area to properly protect all personnel and prevent the traveling public or airport tenants from disturbing the work.

C. During the progress of the work all debris, empty containers, waste, resins,

lubricants, etc., shall be removed by the Contractor at the end of each work day, and the work area shall be left clean and orderly.

### 3.3 OPERATION OF AIRPORT FACILITIES DURING CONSTRUCTION

The Contractor shall coordinate the sequence of work under this contract with the State to permit the continuing operation of existing Airport Facilities.

## PART 4 – MEASUREMENT AND PAYMENT

### 4.1 BASIS OF MEASUREMENT AND PAYMENT

Work under this section will not be measured nor paid for separately but shall be considered incidental to and included in the various items in the Proposal Schedule.

END OF SECTION

## SECTION 01 30 00

### SUBMITTALS

#### PART 1 - GENERAL

##### 1.1 RELATED DOCUMENTS

The General Provisions of the Contract, including General and Special Provisions and General Requirements of the Specifications, apply to the work specified in this Section.

##### 1.2 SUMMARY

- A. This section specifies administrative and procedure requirements for submittals governing the Contractor's schedule of values and submittals required for performance of work, including:
1. Contractor's construction schedule
  2. Submittal schedule
  3. Daily construction reports
  4. Shop Drawings
  5. Product Data
  6. Samples
- B. Administrative Submittals: Refer to other sections of the General Provisions of the contract, including General and Special Provisions and General Requirements of the Specifications for administrative submittals. Such submittals include but are not limited to:
1. Application for payment
  2. Performance and payment bonds
  3. Insurance Certificates
  4. Request for approval of subcontractors
  5. Tax and wage rates

##### 1.3 SCHEDULE OF VALUES

- A. Coordination: Correlate line items in the Schedule of Values with other required administrative schedules and forms including:
1. Contractor's construction schedule
  2. Applications for payment
  3. List of subcontractors
  4. List of products



5. List of principal suppliers and fabricators
6. Schedule of submittals

Where work is separated into phases requiring separately phased payments, provide subschedules showing values correlated with each phase of payment.

Submit the Schedule of Values to the State at the earliest possible date by no later than fourteen (14) days prior to the date scheduled for submittal of the initial Application for Payment.

- B. Format and Content: Use the Project Specifications table of contents as a guide to establish the format for the Schedule of Values. Provide at least one line item for each Specification Section.
1. Identification: Include the following Project identification on the schedule of values:
    - a. Project name and location
    - b. Project number
    - c. Contractor's name and address
    - d. Date of submittal
  2. Arrange the Schedule of Values in tabular form with separate columns to indicate the following items listed:
    - a. Related Specification Section or Division
    - b. Description of work
    - c. Name of subcontractor
    - d. Name of manufacturer or supplier
    - e. Change Orders by number that affect value
    - f. Dollar value
    - g. Percentage of contract sum to nearest one-hundredth percent, adjusted to total 100 percent.
  3. Provide a breakdown of the contract sum in sufficient detail to facilitate continued evaluation of Applications for Payment and progress reports. Coordinate with the project specifications table of contents. Break principle work or subcontract amounts down into several smaller identifiable items of work.

4. Round amount to nearest whole dollar; the total shall equal the contract sum.
5. Provide a separate line item in the Schedule of Values for each part of the work where Applications for Payment may include materials or equipment, purchased, fabricated or stored, but not yet installed.
6. Provide separate line items on the Schedule of Values for initial cost of the materials, for each subsequent stage of completion, and for total installed value of that part of the work.
7. Unit-Cost Allowances: Show the line-item value of unit-cost allowances, as a product of the unit cost, multiplied by the measured quantity. If not in the proposal, estimate quantities from the best indication in the Contract Documents.
8. Margins of Cost: Show line items for indirect costs and margins on actual costs only when such items are listed individually in Applications for Payment. Each item in the Schedule of Values and Applications for Payment shall be complete. Include the total cost and proportionate share of general overhead and profit margin for each item.

Temporary facilities and other major cost items that are not direct costs of actual work-in-place may be shown either as separate line items in the Schedule of Values or distributed as general overhead expense, at the Contractor's option.

9. Schedule Updating: Update and resubmit the Schedule for Values prior to the next Applications for Payment or when Change Orders or Construction Change Directives result in a change in the Contract Sum.

#### 1.4 CONTRACTOR'S CONSTRUCTION SCHEDULE

- A. Bar-Chart Schedule: Prepare a fully developed, horizontal bar-chart type Contractor's construction schedule. Submit no later than five (5) days prior to "Notice to Proceed."

1. Provide a separate time bar for each significant construction activity. Provide a continuous vertical line to identify the first working day of each week. Use the same breakdown of units of the work as indicated in the "Schedule of Values."
  2. Within each time bar indicate estimated completion percentage in a minimum of 10 percent increments. As work progresses, place a contrasting mark in each bar to indicate actual completion.
  3. Prepare the schedule on a sheet, or series of sheets, of stable transparency, or other reproducible media, of sufficient width to show data for the entire construction period.
  4. Secure time commitments for performing critical elements of the work from parties involved. Coordinate each element on the schedule with other construction activities; include minor elements involved in the sequence of the work. Show each activity in proper sequence. Indicate graphically sequences necessary for completion of related portions of the work.
  5. Coordinate the Contractor's construction schedule with the schedule of values, list of subcontracts, submittal schedule, progress reports, payment requests and other schedules.
  6. Indicate completion in advance of the date established for Substantial Completion. Indicate Substantial Completion on the schedule to allow time for the State's procedures necessary for certification of Substantial Completion.
- B. Cost Correlation: At the head of the schedule, provide a two item cost correlation line, indicating "pre-calculated" and "actual" costs. On the line show dollar-volume of work performed as of the dates used for preparation of payment request.
- C. Distribution: Following response to the initial submittal, print and distribute one (1) copy to the State, and at least one (1) copy to subcontractors, and other parties required to comply with scheduled dates. Post copies in the project meeting room and temporary field office.
1. When revisions are made, distribute to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the work and are no longer involved in construction activities.

## 1.5 SHOP DRAWINGS, SAMPLES, CATALOG CUTS & CERTIFICATES

- A. The Contractor shall submit a complete list of all long lead items to the State within three (3) working days after award of contract. The Contractor shall submit all long lead item shop drawings to the State within fifteen (15) working days after award of contract. Procurement of all long lead items may occur prior to issuance to Notice to Proceed (NTP) with written permission from the State. Long lead items are those items where their timely receipt is critical to ensuring completion of the project within the contract time.
- B. The Contractor shall submit to the State for review one (1) reproducible and one (1) PDF file prints of all shop drawings. Certificates and equipment lists called for under the various headings of these specifications and submittals, such as catalog cuts, shall be submitted in one (1) reproducible and one (1) PDF file to the State for review. Each shop drawing, certificate of compliance, and equipment list shall be checked and certified correct by the Contractor, and shall be identified with the applicable information specified hereinafter under "Submittal Identification."
- C. Each copy of the drawings, certificates, catalog cuts, and lists reviewed by the State will be stamped "REVIEW ACTION" with the appropriate action noted therein. The review of the State is not to be construed as a complete check but will indicate only that the general method of construction and detailing is satisfactory. Acceptance of such drawings will not relieve the Contractor of the responsibility for any error or omission which may exist as the Contractor shall be responsible for the dimensions and design of adequate connections, details, and satisfactory construction of all work. Each shop drawing submitted for review shall have, in the lower right-hand corner just above the title, a white space 4"X4" in which the engineer can place the stamp and indicate action taken. Contractor shall also inform his subcontractors to provide this space in their preparation of shop drawings.
- D. When required by the specifications, two (2) samples of sufficient size for the test required shall be submitted to the State for approval prior to commencing fabrication or delivery of any material to the construction site. Each sample shall be properly marked for each identification. Samples, after approval, may be used in construction at the discretion of the State

## 1.6 CERTIFICATE OF COMPLIANCE

Two (2) copies of the material manufacturer's certificates of compliance shall be submitted to the State prior to shipment of any material to the construction site.

1.7 LIST OF SOURCE MATERIALS

Two (2) copies of the list and source of materials to be used in this contact shall be submitted to the State for approval before any materials is delivered to the construction site.

1.8 MAINTENANCE DATA AND OPERATING INSTRUCTIONS

Two (2) copies of maintenance data and operating instructions shall be submitted at the conclusion of the equipment installation. The manual shall include instructions for operating, maintenance, repair, recommended inspection points and periods for inspection in a practical, complete and comprehensive manner. The information shall be arranged in a logical, orderly sequence, including a general description of the equipment and significant technical characteristics. Test, adjustment, and calibration information shall include illustrations, diagrams, and step-by-step procedures.

1.9 SUBMITTAL IDENTIFICATION

- A. To avoid rejection and to clarify each submittal, the General Contractor shall have a label made up (to be referred to as the submittal stamp) in the following format.

\_\_\_\_\_  
Contractor's Name

Submittal Number \_\_\_\_\_

LOT J: ELECTRICAL VAULT REPAIRS  
STATE PROJECT NO. HNL-2017-OME-04

THIS SUBMITTAL HAS BEEN CHECKED AND VERIFIED BY THIS GENERAL CONTRACTOR AND IS CERTIFIED CORRECT AND IN COMPLIANCE WITH CONTRACT DRAWINGS AND SPECIFICATIONS.

DATE SUBMITTED \_\_\_\_\_  
SPECIFICATION SECTION # \_\_\_\_\_  
SPECIFICATION PARAGRAPH # \_\_\_\_\_  
DRAWING NUMBER \_\_\_\_\_  
SUBCONTRACTOR NAME \_\_\_\_\_  
SUPPLIER NAME \_\_\_\_\_  
MANUFACTURER NAME \_\_\_\_\_  
CERTIFIED BY \_\_\_\_\_  
(Contractor's Signature)

- B. This stamp "filled in" should appear on each reproducible shop drawing,

on the cover sheet of copies of test and mill reports, certificate of compliance, catalog cuts, brochures, etc. The stamp should be placed on a heavy stock paper merchandise (approximately three inches by six inches – 3"x6") and one tag tied to each sample submitted for approval. The tag on the samples should state what the sample is, so that if the tag is accidentally separated from the sample they can be matched up again. The back of this tag will be used by the State for his receipt, approval, and log stamp and for any comments that relate to the sample.

- C. Submission Number: Each submission is to be sequentially numbered in the space provided in the contractor's stamp. Correspondence and transmittals will refer to this number.
- D. Submittal Register: The Contractor shall maintain and update the submittal register throughout the project period until all submittals have been approved. The register shall be submitted to the State on a bimonthly basis. The submittal register affixed to the end of this section provides a general guide for the Contractor and may not address all potential submittals required by the Contractor.

#### 1.10 GUARANTEES

Guarantee period shall start at time of acceptance in writing by the State.

All guarantees and warranties shall be made out to the "State of Hawaii." Supplier and subcontractor guarantees shall be co-signed by the Contractor.

The Contractor is solely responsible for coincidence or non-coincidence of factory warranties or equipment guarantees, and the Contractor's own warranties or guarantees as required by the contract. The Contractor is solely responsible for scheduling and coordinating the installation of equipment and materials so as to take maximum advantage of factory warranties.

#### PART 2 - PRODUCTS

Not Used.

#### PART 3 - EXECUTION

Not Used.

PART 4 – MEASUREMENT AND PAYMENT

Any costs incurred in compliance with the provisions of this Section shall be borne by the Contractor. No separate payment will be made to the Contractor for measures required by this Section.

END OF SECTION





***FORMS*** (TO BE COMPLETED BY SUCCESSFUL BIDDER)

*SURETY PERFORMANCE BOND*

*WAGES AND HOURS OF EMPLOYEES ON PUBLIC WORKS LAW*

*CHAPTER 104 HRS COMPLIANCE CERT*

*CERTIFICATION OF COMPLIANCE WITH ACT 68, SLH 2010*

*CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT*

**PERFORMANCE BOND (SURETY)**  
(6/21/07)

**KNOW TO ALL BY THESE PRESENTS:**

That \_\_\_\_\_,  
*(Full Legal Name and Street Address of Contractor)*

as Contractor, hereinafter called Principal, and \_\_\_\_\_  
\_\_\_\_\_  
*(Name and Street Address of Bonding Company)*

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a  
surety in the State of Hawaii, are held and firmly bound unto the \_\_\_\_\_,  
*(State/County Entity)*

its successors and assigns, hereinafter called Obligee, in the amount of \_\_\_\_\_

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), to which payment Principal and Surety bind themselves,  
their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by  
these presents.

**WHEREAS**, the above-bound Principal has signed a Contract with Obligee on  
\_\_\_\_\_, for the following project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

hereinafter called Contract, which Contract is incorporated herein by reference and made a part  
hereof.

**NOW THEREFORE**, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in  
strict accordance with the terms of the Contract as said Contract may be modified or amended  
from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Oblige to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Oblige in satisfaction of the surety's performance obligation on this bond.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Name of Principal (Contractor)

\*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Name of Surety

\*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**\*ALL SIGNATURES MUST BE ACKNOWLEDGED  
BY A NOTARY PUBLIC**

**Requirements of Chapter 104, HRS**  
**Wages and Hours of Employees on Public Works Law**

---

Chapter 104, HRS, applies to every public works construction project over \$2,000, regardless of the method of procurement or financing (purchase order, voucher, bid, contract, lease arrangement, warranty).

**Rate of Wages for Laborers and Mechanics**

- Minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the Director of Labor and Industrial Relations and published in wage rate schedules, shall be paid to the various classes of laborers and mechanics working on the job site. [§104-2(a), (b), Hawaii Revised Statutes (HRS)]
- If the Director of Labor determines that prevailing wages have increased during the performance of a public works contract, the rate of pay of laborers and mechanics shall be raised accordingly. [§104-2(a) and (b), HRS; §12-22-3(d) Hawaii Administrative Rules (HAR)]

**Overtime**

- Laborers and mechanics working on a Saturday, Sunday, or a legal holiday of the State or more than eight hours a day on any other day shall be paid overtime compensation at one and one-half times the basic hourly rate plus the cost of fringe benefits for all hours worked. [§§104-1(5), 104-2(c), HRS]

**Weekly Pay**

- Laborers and mechanics employed on the job site shall be paid their full wages at least once a week, without deduction or rebate, except for legal deductions, within five working days after the cutoff date. [§104-2(d), HRS]

**Posting of Wage Rate Schedules**

- Wage rate schedules shall be posted by the contractor in a prominent and easily accessible place at the job site. A copy of the entire wage rate schedule shall be given to each laborer and mechanic employed under the contract, except when the employee is covered by a collective bargaining agreement. [§104-2(d), HRS]

**Withholding of Accrued Payments**

- If necessary, the contracting agency may withhold accrued payments to the contractor to pay to laborers and mechanics employed by the contractor or subcontractor on the job site any difference between the wages required by the public works contract or specifications and the wages received. [§104-2(e), HRS]

**Certified Weekly Payrolls and Payroll Records**

- A certified copy of all payrolls shall be submitted weekly to the contracting agency.
- The contractor is responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates listed are not less than the applicable rates contained in the applicable wage rate schedule, and that the classifications for each laborer or mechanic conform with the work the laborer or mechanic performed. [§104-3(a), HRS]
- Payroll records shall be maintained by the contractor and subcontractors for three years after completion of construction. The records shall contain:
  - the name and home address of each employee
  - the employee's correct classification
  - rate of pay (basic hourly rate + fringe benefits)
  - daily and weekly hours worked
  - weekly straight time and overtime earnings
  - amount and type of deductions
  - actual wages paid
  - date of payment
- Records shall be made available for inspection by the contracting agency, the Department of Labor and Industrial Relations, and any of its authorized representatives, who may also interview employees during working hours on the job. [§104-3(b), HRS]

**Termination of Work on Failure to Pay Wages**

- If the contracting agency finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has not been paid prevailing wages or overtime, the contracting agency may, by written notice to the contractor, terminate the contractor's or subcontractor's right to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid. The contracting agency may complete this work by contract or otherwise, and the contractor or contractor's sureties shall be liable to the contracting agency for any excess costs incurred. [§104-4, HRS]

**Apprentices and Trainees**

- In order to be paid apprentice or trainee rates, apprentices and trainees must be parties to an agreement either registered with or recognized as a USDOL nationally approved apprenticeship program by the Department of Labor and Industrial Relations, Workforce Development Division. [§12-22-6(1), HAR]
- The number of apprentices or trainees on any public work in relation to the number of journeyworkers in the same craft classification as the apprentices or trainees employed by the same employer on the same public work may not exceed the ratio allowed under the apprenticeship or trainee standards registered with or recognized by the Department of Labor and Industrial Relations. A registered or recognized apprentice receiving the journeyworker rate will not be considered a journeyworker for the purpose of meeting the ratio requirement. [§12-22-6(2), HAR]

**Enforcement**

- To ensure compliance with the law, DLIR and the contracting agency will conduct investigations of contractors and subcontractors. If a contractor or subcontractor violates the law, the penalties are:
  - First Violation Equal to 10% of back wages found due or \$25 per offense, whichever is greater.
  - Second Violation Equal to amount of back wages found due or \$100 for each offense, whichever is greater.
  - Third Violation Equal to two times the amount of back wages found due or \$200 for each offense, whichever is greater; and  
Suspension from doing any new work on any public work of a governmental contracting agency for three years.
- A violation would be deemed a second violation if it occurs within two years of the **first notification of violation**, and a third violation if it occurs within two years of the **second notification of violation**.
- Suspension. For a first or second violation, the department shall immediately suspend a contractor who fails to pay wages or penalties until all wages and penalties are paid in full. For a third violation, the department shall penalize and suspend the contractor as described above, **except that if the contractor continues to violate the law, then the department shall immediately suspend the contractor for a mandatory three years. The contractor shall remain suspended until all wages and penalties are paid in full.** [§§104-24, 104-25]
- Any contractor who fails to make payroll records accessible or provide requested information within 10 days, or fails to keep or falsifies any required record, shall be assessed a penalty as provided in Section 104-22(b), HRS. [§104-3(c)]
- If any contractor interferes with or delays any investigation, the contracting agency shall withhold further payments until the delay has ceased. Interference or delay includes failure to provide requested records or information within ten days, failure to allow employees to be interviewed during working hours on the job, and falsification of payroll records. The department shall assess a penalty of \$1,000 per project, and \$100 per day thereafter, for interference or delay. [§104-22(b)]

For additional information, visit the department's website at <http://dlir.state.hi.us/> or contact any of the following DLIR offices:



|                                      |          |
|--------------------------------------|----------|
| Oahu (Wage Standards Division) ..... | 586-8777 |
| Maui .....                           | 243-5322 |
| Hilo .....                           | 974-6464 |
| West Hawaii .....                    | 322-4808 |
| Kauai.....                           | 274-3351 |

CHAPTER 104, HRS COMPLIANCE CERTIFICATE

The undersigned bidder does hereby certify to the following:

1. Individuals engaged in the performance of the contract on the job site shall be paid:

A. Not less than the wages that the director of labor and industrial relations shall have determined to be prevailing for corresponding classes of laborers and mechanics employed on public works projects; and

B. Overtime compensation at one and one-half times the basic hourly rate plus fringe benefits for hours worked on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day.

2. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.

DATED at Honolulu, Hawaii, this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Name of Corporation, Partnership, or Individual

\_\_\_\_\_  
Signature and Title of Signer

Subscribed and sworn before me  
this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ Judicial  
Circuit, State of Hawaii  
My Commission Expires: \_\_\_\_\_

**CERTIFICATION OF COMPLIANCE WITH ACT 68, SLH 2010**

I **attest** that the work force (labor) utilized on this Project No. \_\_\_\_\_  
Contract No. \_\_\_\_\_ has been performed by no less than 80 % of Hawaii  
residents as defined in HRS 78-1. I am also aware of all provisions of Act 68, SLH  
2010, as detailed in Section \_\_\_\_\_ of the Project's specifications.

This statement covers the date xx/xx/xxxx, of Notice to Proceed with construction  
through \_\_\_\_\_ 2010.

ATTESTED BY: \_\_\_\_\_  
(Name of officer and title)

Notarized by: