

GENERAL REQUIREMENTS AND COVENANTS

County of Hawaii
Department of Public Works

July, 1972

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SECTION 1 - ABBREVIATIONS AND DEFINITIONS

Whenever the following terms or pronouns are used in these specifications, or in any documents or instruments where these specifications govern, the intent and meaning shall be interpreted as follows:

1.1 ABBREVIATIONS:

AASHO - The American Association of State Highway Officials
ASA - American Standards Association
ASTM - American Society for Testing Materials
AWG - American Wire Gage
AWS - American Welding Society
AWPA - American wood-Preservers' Associations
AWWA - American Water Works Association
NEMA - National Electrical Manufacturers' Association
UL - Underwriters' Laboratories, Inc.

1.2 DEFINITIONS:

Addenda A written document which may be issued by the Chief Engineer during the bidding period involving changes to the plans and specifications which shall be considered and made a part of the contract.

Amendment A written document properly executed by the Contractor and the Mayor issued to amend the existing contract between the County and the Contractor.

Bid or Proposal The offer of the bidder submitted in the prescribed manner to furnish all labor, equipment, and materials and to perform the specified work in accordance with the provisions of the plans and specifications within the contract time prescribed therein for the consideration of payment at the prices stated in the proposal form.

Bidder Any individual, partnership, firm, corporation, or joint venture submitting directly or through a duly authorized representative or agent, a proposal for the work contemplated.

Change Order A written order issued by the Engineer to the Contractor requiring the contract work to be performed in accordance with a change or changes that may involve an adjustment in contract time and price or requiring performance of any unforeseen work essential to complete the contract.

Contract The written instrument executed by the Contractor and the County of Hawaii by its Mayor, by which the Contractor is bound to furnish all labor, equipment, and materials and to perform the

specified work within the contract time stipulated, and by which the County of Hawaii is obligated to compensate the Contractor therefor at the prices set forth therein. The contract shall include the Notice to Contractors, Special Notice to Bidders, Addenda, Proposal, Wage Schedule, List of Sub-contractors, General Requirements and Covenants, Special Provisions, Plans, Technical Specification, and Contract Bonds and also any and all amendments and change orders which are required to complete the construction in an acceptable manner.

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

Contract Time The time stated in the proposal and the contract given as a definite number of consecutive working days which is an essential part of the contract. The contract time shall start on the effective date in the Notice to Proceed.

Contractor Any individual, partnership, firm, corporation or joint venture undertaking the execution of the work under the terms of the contract with the County of Hawaii, and acting directly or through his, their or its agents, employees or subcontractors.

County The County of Hawaii.

Department The Department of Public Works, County of Hawaii.

Director of Finance Director of Finance of the County of Hawaii, Department of Finance.

Engineer The County Public Works Chief Engineer directly or through an assistant or representative.

Equal or Approved Equal Whenever this term is used in the plans and/or specifications this shall be interpreted to mean a brand or article pre-qualified in accordance with Section 6.2, Substitution of Materials and Equipment which may be used in place of the one specified.

Inspector Authorized representative of the Engineer.

Liquidated Damages The amount prescribed in the General Requirements and Covenants, Section 8.11, to be paid to the County or to be deducted from any payments due or to become due the Contractor for each working day's delay in completing the whole or any specified portion of the work beyond the contract time allowed in the contract.

<u>Letter of Award</u>	A written notice from the Engineer to the successful bidder(s) stating that he has been awarded the contract.
<u>Mayor</u>	Mayor, County of Hawaii.
<u>Notice to Proceed</u>	A written notice from the Engineer to the Contractor advising him of the date on which he is to begin the prosecution of the work.
<u>Notice of Final Acceptance</u>	A written notice from the Engineer to the Contractor stating that the entire contract which has been completed in all respect in accordance with the plans, specifications, special provisions and any changes thereof previously authorized is accepted.
<u>Notice of Final Settlement</u>	The date of approval by the Engineer of the final voucher for payment shall constitute the date of final settlement of the contract.
<u>Plans</u>	The contract drawings approved by the Engineer, which show the location, character, dimensions and details of the work to be done and shall be a part of the contract.
<u>Post Contract Drawings</u>	The post contract drawings are drawings issued after the award of the contract for the purpose of clarification and/or change to the work indicated on the original plans and shall be made a part of the contract.
<u>Project Guarantee</u>	A guarantee issued by the Contractor to the County against defects resulting from the use of defective materials, equipment, or workmanship as covered in Section 8.15.
<u>Proposal Form</u>	The form prepared by the Department on which the written offer or formal bid for the work to be done is submitted.
<u>Proposal Guaranty or Bid Bond</u>	The cash or check or bidder's bond furnished by the bidder as a warranty of good faith that he will enter into a contract with the County and to execute the required bond covering the work contemplated, if the same is awarded to him as covered in Section 2.8, Proposal Guaranty.
<u>Special Provisions</u>	The specific clauses setting forth conditions or requirements peculiar to the project under consideration, which are not thoroughly or satisfactorily stipulated in these specifications.
<u>Specifications</u>	The directions, provisions and requirements as contained in the General Requirements and Covenants, addenda, special provisions, technical specifications, and change orders pertaining to the

method and manner of performing the work and to quantities of materials to be furnished under the contract.

State The State of Hawaii.

Superintendent The representative of the Contractor, present on the work at all times during progress, authorized to receive and fulfill instructions from the Engineer.

Surety The individual, firm or corporation which is bound by the contract bond with and for the Contractor to insure his acceptable performances of the contract.

Working Day A working day shall be any day other than Saturdays, Sundays and legal holidays on which 60% of the normal working forces of the Contractor may proceed with the current controlling operations or operation, as determined by the Engineer, for at least six (6) hours towards the completion of such operation or operations, unless such work is suspended for causes beyond the Contractor's control.

SECTION 2 - PROPOSAL REQUIREMENTS AND CONDITIONS

2.1 COMPETENCY OF BIDDERS - Each prospective bidder must file a written notice of his intention to bid not later than six (6) calendar days prior to the date designated for the opening of bids as required by Section 103-25, Hawaii Revised Statutes.

The written notice of intention to bid applies to all construction of buildings, roads, other field construction work or other public works and, in conjunction therewith, the furnishing and installing of furniture, equipment appliances, materials and any combination of these items. The notice of intention to bid does not apply to the mere furnishing and installing of furniture, equipment, appliances, and any combination of these items.

The written notice of intention to bid is to be filed in the office of the Engineer in the County Building at Hilo, Hawaii, not later than 4:30 p.m. of the Friday preceding the Thursday of the bid opening, unless otherwise instructed in the Notice to Contractors. If the notice is mailed the hour of posting must be stamped by the postal authorities and be prior to 12 midnight of the Friday described above. Commercial meter stamp on mailed notices will not be accepted should the mailed notice arrive after the deadline described above.

If two (2) or more prospective bidders desire to bid jointly as a joint venture on a single project, they must file an affidavit of joint venture with the Engineer, and such affidavit of joint venture will be valid only for the specific project for which it is filed.

The Engineer may, in accordance with Section 103-25, Hawaii Revised Statutes, require the prospective bidder to file a "Standard Questionnaire and Financial Statement for Bidders", on the form provided by the Department properly executed and notarized, at least forty-eight (48) hours prior to the time advertised for the opening of bids. If the information in the questionnaire proves satisfactory, the bidder's proposal will be received. The questionnaire will be returned to the bidder after it has served its purpose.

If upon review of the questionnaire, or otherwise, the bidder appears not fully qualified and able to perform the intended work, the Engineer shall, after affording the bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, refuse to receive or to consider any bid offered by the prospective bidder.

2.2 DISQUALIFICATION OF BIDDERS - Any one or more of the following causes will be considered as sufficient for the disqualification of the bidder:

1. Non-compliance with Section 2.1 "COMPETENCY OF BIDDERS".
2. Evidence of collusion among bidders.
3. Lack of responsibility and cooperation as shown by past work.
4. For being in arrears on existing contracts with the County of Hawaii, or having defaulted on a previous contract.

5. Lack of proper equipment and/or sufficient experience to perform the work contemplated as revealed by the Questionnaire.
6. No contractor's license or a contractor's license which does not cover type of work contemplated.
7. More than one proposal for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name.
8. For delivery of bids after the deadline for receiving bids.

2.3 INTERPRETATION OF QUANTITIES IN BID SCHEDULE - When quantities for individual items of work are listed in the proposal form for which respective unit prices are asked, said quantities are to be considered as approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work and the undersigned agrees that he is satisfied with and will at no time dispute said estimated quantities as a means of comparing the bids.

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

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

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

2.4 EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF WORK - The bidder shall examine carefully the site of work contemplated and the proposal, plans, specifications and contract form therefor. It will be assumed that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished, and as to the requirements of these specifications and plans and contract.

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

Where an investigation of subsurface conditions has been made by the Department in respect to foundation or other design, the bidders may inspect the records of the Department as to such investigation, including examination of samples, if any, at the office of the Engineer, Hilo, Hawaii.

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

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

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

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

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

In the event utilities which were not shown on the plans and specifications are damaged or disturbed by the Contractor, the Contractor shall not be held liable but shall notify the Engineer. Upon instruction from the Engineer, the Contractor shall repair all damages which shall be considered to be additional work as covered by Section 4.2(c) "ADDITIONAL WORK". The Contractor shall have, however, checked with and verified utility locations with the respective agencies.

Utilities which must be relocated due to construction and not indicated in the plans and specifications shall also be considered to be additional work as covered by Section 4.2(c) "ADDITIONAL WORK". The Contractor shall not in any case if he encounters underground utilities proceed with any work until he has notified the Engineer.

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

2.5 ADDENDA, BULLETINS AND INTERPRETATIONS - No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally before the opening of bids. Discrepancies, omissions, or doubts as to the meaning of drawings and specifications should be communicated in writing to the Engineer for interpretation.

Every request for such interpretation should be in writing addressed to CHIEF ENGINEER, DEPARTMENT OF PUBLIC WORKS, at 25 AUPUNI STREET, HILO, HAWAII 96720. Any interpretation, if made, and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed to all prospective bidders (at the respective addresses furnished for such purposes), not later than five (5) days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda and bulletins so issued shall become part of the contract documents.

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

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

2.8 PROPOSAL GUARANTY - No proposal will be considered unless accompanied by one of the following forms of bidder's security; a cashier's check or certified check on a solvent bank doing business within the State or a bidder's bond executed by an approved surety insurer, made payable at sight to the Mayor in the manner, form and amount required by Section 103-28 to 103-31 inclusive, Hawaii Revised Statutes. The proposal guaranty shall be equal to five percent (5%) of the total amount of the bid submitted provided, however, that if the amount of the bid exceeds FIFTY THOUSAND DOLLARS (\$50,000.00), the said surety bond, cashier's check or certified check shall be for TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) plus two percent (2%) of the amount in excess of

FIFTY THOUSAND DOLLARS (\$50,000.00). In case alternate bids are required, the amount of the surety bond, cash, cashier's check or certified check shall be based on the highest alternate bid submitted.

The successful bidder's check or Bid Bond will be retained until he has entered into a satisfactory contract and has furnished the required contract Performance Bond. Failure to furnish a satisfactory Contract Performance Bond within the specified time may be determined to be abandonment of the contract by the bidder and forfeiture of the Certified Check or Bid Bond as Liquidated Damages to the County. The County further reserves the right to hold the Certified Checks or Bid Bond of the three lowest bidders, until the successful bidder has entered into a contract and has furnished the required Performance Bond.

2.9 DELIVERY OF PROPOSALS - The entire proposal shall be placed together with the proposal guaranty, in a sealed envelope not smaller than 4-3/4" x 11", so marked as to indicate the identity of the project, the project number, the date of the bid opening and the name and address of the bidder and then delivered as indicated in the Notice to Contractors. Proposals will be received up to the time fixed in the public notice for the opening of bids and must by that time be in the hands of the officials indicated.

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

2.11 PUBLIC OPENING OF PROPOSALS - Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors. Bidders or their authorized agents are invited to be present.

2.12 DEPOSIT AND REFUND FOR PLANS AND SPECIFICATIONS - All plans and specifications may be obtained from the office of the Chief Engineer, County Building, 25 Aupuni Street, Hilo, Hawaii 96720 upon a deposit of the specified amount as stipulated in the Notice to Contractors. Minimum deposit shall be \$25.00.

The deposit shall be refunded upon the return of the complete plans and specifications, provided that they are returned within thirty (30) consecutive calendar days after the date designated for the opening of bids. No refund shall be made after the expiration of this period. The plans and specifications are the property of the County of Hawaii on loan to the bidder until bids are due. Bidders, should they decide not to submit bid, are requested to return the plans and specifications when such decision is made. The deposit shall not be construed to be the purchase price of any part of these documents.

SECTION 3 - AWARD AND EXECUTION OF CONTRACT

3.1 CONSIDERATION OF PROPOSALS - After the proposals are opened and read, the figures will be extended and/or totaled in accordance with the bid prices of the acceptable proposals and the totals will be compared and the results of such comparison shall immediately be made public. In the comparison of bids, words written in the proposals will govern over figures and unit prices will govern over totals. Until the award of the contract, however, the right will be reserved to reject any and all proposals and to waive any defects as may be deemed best for the interest of the County.

3.2 REJECTION OF PROPOSALS - Any and all proposals may be rejected if they show any non-compliance with applicable law, alteration of form, additions not called, conditional bids, incomplete bids, uninitialled erasures, other defects, or if the prices are obviously unbalanced, or if sufficient funds are not available to prosecute the work. The Engineer reserves the right to waive any informalities to bids received, when such is found to be in the best interest of the County.

When proposals are signed by an agent, other than the officer or officers of a corporation authorized to sign the proposal on its behalf or a member of a co-partnership, a Power of Attorney must be on file with the Department of Public Works prior to opening of bids, or it shall be submitted with the proposal, otherwise, the proposal will be rejected as irregular and unauthorized.

3.3 AWARD OF CONTRACT - The award of contract, if it be awarded, will be made within sixty (60) consecutive calendar days after the opening of the proposals to the lowest responsible bidder (including the alternate or alternates which may be selected by the Engineer in the case of alternate bids) whose proposal complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The Engineer may at his discretion, after determining the lowest responsible bidder, negotiate with such bidder to reduce the scope of work and to award the contract at a price which reflects the reduction in the scope of work (Act 92/S.L.H. 1969).

No contract will be awarded to any person or firm suspended under the provisions of Chapter 104 and Chapter 444, Hawaii Revised Statute, as amended.

The contract will be drawn on the forms shown in Appendix A, which will be furnished by the Engineer.

3.4 RETURN OF PROPOSAL GUARANTIES - Within ten (10) consecutive calendar days after the award of the contract, the Department will return the proposal guaranties accompanying such of the proposals as are not to be considered in making the award. All other proposal guaranties will be held until the contract has been fully executed and a satisfactory contract bond posted, after which time they will be returned to the respective bidders whose proposals they accompanied.

3.5 REQUIREMENT OF CONTRACT BOND - The bidder to whom the contract is awarded shall file a guaranty of the faithful performance of said contract, a good and sufficient written bond, this bond and any justification thereto shall conform to the provisions of Sections 78-20, 103-34 to 103-38 inclusive and 507-17, Hawaii Revised Statutes, unless otherwise provided for in the special provisions of the project specification.

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

3.6 EXECUTION OF THE CONTRACT - The contract shall be signed by the successful bidder and returned, together with a satisfactory contract bond, within ten days, not including Sundays and legal holidays, after the bidder has received his contract for execution. No proposal or contract shall be considered binding upon the County until the contract has been fully executed in accordance with Section 13-13, Hawaii County Charter and Section 103-39, Hawaii Revised Statutes.

3.7 FAILURE TO EXECUTE THE CONTRACT - If the bidder to whom a contract is awarded shall fail or neglect to enter into the contract and furnish satisfactory security within ten consecutive calendar days after such award or with such further time as the Engineer may allow, his surety bond shall be declared forfeited and the Surety Corporation (made a party thereto) shall pay to the Engineer the full amount of said bond; or the Engineer shall retain the amount of his deposit or legal tender of certificate of deposit or certified check and utilize the same as a realization to the County. The Engineer may thereupon award the contract to the next lowest responsible bidder or may call for bids, whichever method he may deem is to the best interest of the County.

3.8 SCHEDULE OF PRICES - Unless the proposal requires unit price bids on all items in this project, the successful bidder will be required, after the award of contract to submit a schedule of prices for the various items of construction which make up portions of the project included in the contract. The sum of the prices submitted for the various items must equal the lump sum bid in the bidder's proposal. This schedule will be subject to the approval of the Engineer and he reserves the right to reject same and require the bidder to submit another or several other schedules if in his opinion the prices are unbalanced. This schedule of prices shall be used for the purpose of determining the value of monthly payments due the Contractor for work installed complete in place. The Engineer shall estimate at the close of each month the percentage of work completed under each of the various construction items during such month, and the Contractor shall be paid said percentage of the price established for each item less a 5% retention. See also Section 9.6.

3.9 NOTICE TO PROCEED - After the contract is fully executed and signed by the Mayor, the Contractor will be sent a formal "Notice to Proceed" by the Engineer advising the Contractor of the date on which he may proceed with the work. The Contractor shall be allowed ten (10) working days from said date to begin his work. In the event that the Contractor refuses or neglects to start the work, the Engineer shall use the enforcement powers invested in him by Section 507-17, Hawaii Revised Statutes.

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

In the event the notice to proceed for a project with a fixed completion date is not issued within thirty (30) consecutive calendar days after award, the Contractor will be allowed an extension of time equal to the number of calendar days delayed after the thirtieth (30) day.

3.10 INFORMAL BID - Should the Engineer find that a project is of such nature that it does not require formal advertising pursuant to Section 103-22 to 103-23, Hawaii Revised Statutes, he may then call for informal bids in accordance with the plans and specifications issued for the preparation of such bids.

SECTION 4 - SCOPE OF WORK

4.1 INTENT OF PLANS AND SPECIFICATIONS - It is intended that the plans and specifications shall include everything requisite and necessary to the proper and entire completion of the work, notwithstanding that every item necessarily involved by the work is not particularly mentioned; all work when completed is to be delivered to the County in a perfect and undamaged state. The Contractor shall comply with the obvious intent and meaning of these specifications which shall be construed to include all labor and materials, measures and modes of work necessary to complete the work herein specified in a workmanlike manner and to the satisfaction of the Engineer.

4.2 CHANGES - The Engineer reserves the right subject to the approval of the Director of Finance and the Mayor, to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work or to omit any item or portion of the work as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a change order which will specify, in addition to the work to be done in connection with the change, adjustment of contract time, if any, and the basis of compensation for such work. All detailed cost breakdowns shall be submitted to the Engineer within ten (10) consecutive working days from the date of such written requests in a format similar to that as shown in Appendix C. A change order will not become effective until approved by the Engineer, Director of Finance and the Mayor.

Upon receipt of a change order, the Contractor shall proceed with the ordered work. If ordered in writing by the Engineer, the Contractor shall proceed with the work so ordered prior to actual receipt of a change order therefor.

(a) Increased or Decreased Quantities

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

(A major item shall be construed to be any item, the total cost of which is equal to or greater than ten (10) percent of the total contract price, computed on the basis of the proposal quantity and the contract unit price.) Should it become necessary for the best interest of the County to make changes in excess of that herein specified, the same shall be covered by an amendment.

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

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

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

2. Lump Sum Work - Increases or decreases in projects for which a lump sum price is asked will not be made on the basis of a certain percentage over or under the original lump sum price bid for the project. The cost of increased or decreased work will be determined in accordance with Subsection 4.2(c).
- (b) Omitted Items - Should any contract item of the work be omitted by the Engineer in its entirety, in the absence of a contract change order covering such omission, payment will be made to the Contractor for actual and direct costs, excluding overhead and profit incurred in connection with such omitted contract item if incurred prior to the date of notification in writing by the Engineer of such omission, except as hereinafter provided for costs of handling materials.

If acceptable material is ordered by the Contractor for the omitted item prior to the date of notification of such omission by the Engineer and if orders for such material cannot be canceled, it will be paid for at the actual cost to the Contractor, excluding overhead and profit. In such case, the material paid for shall become the property of the County and the cost of any further handling will be paid for as extra work as provided in Subsection 4.2(d). If the material is returnable to the vendor and if the Engineer so directs, the material shall be returned and the Contractor will be paid for charges made by the vendor for returning the material, excluding any markup for overhead and profit to the Contractor. The cost of handling returned material will be paid for as extra work as provided in Subsection 4.2(d).

- (c) Additional Work - New and unforeseen work will be classed as additional work when determined by the Engineer that such work is not covered by any of the various items for which there is a bid price or by combinations of such items. In the event portions of such work are determined by the Engineer to be covered by some of the various items for which there is a bid price or combinations of such items, the remaining portion of such work will be classed as additional work. Additional work also includes work specifically designated as additional or extra work in the plans or specifications.

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

Compensation for this change order shall be determined as follows:

1. The Contractor shall carefully examine the additional work requested and submit detailed cost breakdowns within ten (10) working days for material, equipment and labor for the Engineer's approval. An applicable percentage for insurance and fringe benefits will be allowed for labor. To the total cost estimate, a 15% overhead and profit will be allowed to the firms doing the actual work. In addition, a 10% overhead and profit will be allowed the General Contractor only on the cost estimate of a subcontractor. The applicable State tax will be allowed.
2. Should the Engineer find that the Contractor's cost estimate is unreasonably high or incorrect, he will so notify the Contractor to re-examine the additional work and resubmit revised detailed cost breakdowns within ten (10) consecutive working days.
3. Should the Engineer find that the Contractor's revised detailed cost breakdowns are still unreasonably high or incorrect, he will issue a change order based on his cost estimate. Should the Contractor disagree with any terms or conditions set forth in a change order which he has not executed, he shall submit a written protest to the Engineer within 5 days after the receipt of such change order. The protest shall state the points of disagreement, contract specification references and, if possible, the quantities and costs involved. If a written protest is not submitted within said five (5) days period, the change order shall be deemed unprotested, and payment will be made as set forth in the change order and such payment shall constitute full compensation for all work included therein or required thereby. Such unprotested change orders will be considered as executed change orders.

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

4.3 MAINTENANCE OF TRAFFIC - The Contractor shall plan and prosecute his work when the construction involves closing or relocation of any local road or highway so that traffic will be hindered to a minimum. Unless otherwise stated in the plans or special provisions, through traffic over local, State or U.S. highways, will be detoured away from the work underway and over marked detours of temporary roads to be maintained by the Contractor at the direction of the Engineer and at no cost to the County.

Wherever and whenever possible, roads or highways shall be kept open to permit at least one-way traffic. The Contractor shall provide temporary traffic bridges to accommodate one traffic lane and to provide access to private driveways when trenches cross said driveways. The temporary traffic bridges shall be constructed so that their decks are flush with the pavement, in accordance to standard practice, and shall be maintained free from projecting nails, splinters or rough edges. The cost of such bridges shall be included in the price bid for the various items of the project.

4.4 SAFETY REGULATION - All machinery, equipment, etc., and other hazard shall be properly guarded in accordance with safety rules and regulations of the State and provisions of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America, in so far as they are applicable. The General Safety Code, Rule XX, presented by the Commission of Labor and Industrial Relations adopted July 18, 1956 and effective January 1, 1957, is applicable and made a part of the contract. The Contractor shall carefully read and strictly comply with its requirements.

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

SECTION 5 - CONTROL OF WORK

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

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

5.2 AUTHORITY OF THE INSPECTOR - Inspectors, employed by the County shall be authorized to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work, and to the preparation, fabrication or manufacture of the materials to be used. The inspector is authorized to call the attention of the Contractor to any failure of the work or materials of the contract. He shall be the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Engineer.

The inspector shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the work by the latter. Any advice which the inspector may give the Contractor shall in no way be construed as binding to the Engineer in any way, or releasing the Contractor from fulfilling all of the terms of the contract. The inspector also shall not be authorized to revoke, alter or waive any requirements of the contract.

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

5.3 PLANS AND SHOP DRAWINGS -

- (a) Contract Plans - Contract plans furnished by the County shall consist of general drawings and show such details as are necessary to give a comprehensive idea of the construction contemplated. Roadway plans show alignment, profile, grade and typical cross-sections of improvement. Structure plans, in general, show in detail all dimensions of the work contemplated, show general features and such details as are necessary to give a comprehensive idea of the structure. Building plans, in general, show exterior and interior elevations, plot plan and such details as are necessary to give a comprehensive idea of the building. Deviations from the plans and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the Engineer.

- (b) Shop Drawings - The Contractor shall prepare, thoroughly check, and submit to the Engineer such shop drawings as may be required to show in detail all parts of the permanent work. In the case of roadway, parking area and stream improvement contracts the shop drawings shall include but not necessarily be limited to cribs, cofferdams, falsework and centering and other items as may be required and requested by the Engineer. In the case of building contracts, shop drawings shall include falsework, bracing, formwork, masonry layouts, design and bending diagrams of reinforcement bars, and diagrams for concrete reinforcement. Shop drawings for structural steel and mill-work shall consist of fabrication details, erection drawings and other working plans necessary to show the details, dimensions, sizes of members, anchor bolt plans and other information necessary for the complete fabrication and erection. The Contractor shall also furnish, where necessary or required or as requested by the Engineer, shop drawings showing information on the details and dimensions for all miscellaneous installations of material or equipment furnished and installed by the Contractor.

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

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

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

- (c) Descriptive Sheets - The Contractor shall submit to the Engineer six (6) complete sets of descriptive sheets such as brochures, catalogs, illustrations, etc., which will completely describe the material, product, equipment, furniture or appliances to be used in the project as shown in the plans and specifications. It is the responsibility of the Contractor to submit descriptive sheets for approval as required at the earliest possible date after the

date of notice to proceed in order to meet their construction schedule. Delays caused by the failure of the Contractor to submit descriptive sheets as required will not be considered as justifiable reasons for contract time extension.

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

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

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

Where detailed drawings are shown, they will govern insofar as methods of construction that are not described in the specifications. All drawings on a scale of 3/8" to the foot or over shall be considered detail drawings. Schedules for interior work shall also be considered detail drawings.

Within the plan itself, if there is a conflict between the architectural sheets and the mechanical or electrical or structural sheets, etc., the conflict shall be considered a discrepancy and the Contractor shall immediately refer same to the Engineer for a decision.

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

5.6 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT -

- (a) Plans and Specification - The Contractor will be supplied up to twelve (12) copies of the plans and specifications. The Contractor shall have available on the work, at all times, one copy each of said plans and specifications; he shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Engineer and with other Contractors in every possible way.
- (b) Order by Engineer - Any order given by the Engineer, not otherwise required by the specifications to be in writing, will on request of the Contractor be given or confirmed by the Engineer in writing.
- (c) Authorized Representative - An authorized representative of the Contractor shall be present at the site of the work at all times while work is actually in progress on the contract.
- (d) Engineering Work - The Contractor shall, subject to approval of the 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 plan 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 in lines, grades or elevations and shall at once on instruction from the Engineer correct and make good such errors or any errors or faults in the work resulting from errors in engineering performed under the requirements of his contract to the entire satisfaction of the Engineer. Full compensation for the work shall be included in the prices paid for contract items of work. No additional allowance will be made for the correction of incorrect engineering work. The Contractor shall employ a licensed surveyor to lay out the work.

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

- (e) Use of Structure - The Department shall have the right at any time during construction of the structure or structures to enter same for the purpose of installing by government labor or by any other Contractor any necessary work in the connection with the installation of facilities, it being mutually understood and agreed, however, that the Contractor and the Department will, so far as possible, work to the mutual advantage of both, where their several works in the above-mentioned or in unforeseen instances touch upon or interfere with each other. The Engineer shall allocate the work and designate the sequence of construction in case of controversy between Contractors on separate projects under County jurisdiction.

The Department shall also have the right to use the structure, equipment or any part thereof, at any time after it is considered by the Engineer as available. In the event that the structure, equipment or any part thereof is so used, the County shall be responsible for all expenses incidental to such use and any damages resulting therefrom.

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

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

The Contractor unless otherwise noted in the specifications shall maintain an office, equipped with a telephone, connected with local telephone service during the continuance of his contract and shall have in said office at all times during working hours a representative authorized to receive drawings, notices, letters or other communications from the Engineer; and such drawings, notices, letters or other communications given or received by such representative shall be deemed to have been given to and received by the Contractor.

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

* STATE OF HAWAII - COUNTY OF HAWAII

(PROJECT TITLE)

(PROJECT JOB NO.)

(LOCATION)

(C.I.P. FUNDING)

(COUNTY AND/OR *ACT _____/ SLH _____, ITEM _____)

MAYOR _____

DEPARTMENT OF PUBLIC WORKS-CHIEF ENGINEER: _____

FOR (USING AGENCY) _____

ARCHITECTS AND/OR ENGINEERS: _____

GENERAL CONTRACTOR: _____

* For projects involving State and County funds.

The Contractor shall submit a layout of the sign before proceeding with the work, and shall make all request changes. The approved project sign(s) shall be rigidly and firmly braced and securely attached to the supports and shall be so constructed to withstand wind pressure of not less than 30 pounds per square foot of area subject to pressure.

The cost shall be included in the price bid for the various items of the project.

5.7 COMMENCEMENT REQUIREMENTS - Prior to beginning operations, the Contractor shall submit the following to the Engineer for approval:

- (a) Superintendent or authorized representatives on the jobsite (See Subsection 5.6 "COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT").
- (b) Working hours on the job (See Subsection 8.2 "WORKING HOURS").
- (c) List of subcontractors, if any (See Subsection 7.1(k) "List of Joint Contractor and/or Subcontractors").
- (d) Breakdown cost for monthly estimates (See Subsection 3.8 "SCHEDULE OF PRICES").
- (e) Proof of insurance coverage for the project (See Subsection 7.12 "INSURANCE").
- (f) Progress schedule (See Subsection 8.4 "PROGRESS SCHEDULE").
- (g) License and permits (See Subsection 7.3 "LICENSES AND PERMITS").

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

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

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

Projects requiring inspection by the County Planning Department, County Department of Water Supply, State Department of Health, State Department of Transportation, State Fire Marshall and other agencies shall be subject to the respective inspection at all times and their respective rules and regulations shall be complied with.

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

5.9 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK - All work which has been rejected shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed him for such removal or replacement. Any work done beyond the work limits shown on the plans and specifications or established by the Engineer or any additional work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor's expense. Upon failure on the part of the Contractor to comply promptly with any order of the Engineer made under the provisions of this subsection, the Engineer shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from any monies due or to become due the Contractor.

5.10 FINAL INSPECTION - Upon notification to the Engineer in writing by the Contractor that the project is complete and is ready for final inspection, the inspectors will briefly inspect the work. If they find that the work is ready for a final inspection, they will schedule a formal final inspection by the Engineer which shall be held within ten (10) days after receiving notice from the Contractor. If, however, the inspectors find that the project is not ready for final inspection, a final inspection will not be scheduled; and the Contractor shall be responsible to correct the faults found after which time he shall again notify the Engineer in writing that the project is ready for final inspection.

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

If upon final inspection, the Engineer declares the project satisfactorily completed and accepts the work, the date of completion will be established by the Engineer as the date on which the Contractor notified the Engineer in writing that the project was ready for the final inspection, after which no working days will be charged against the contract time, and the Contractor shall be so notified.

SECTION 6 - CONTROL OF MATERIALS AND EQUIPMENT

6.1 MATERIALS AND EQUIPMENT - There will be no County-owned materials or equipment supplied the Contractor, unless so provided for in the plans and specifications for the project.

6.2 SUBSTITUTION OF MATERIALS AND EQUIPMENT -

- (a) Before Bid Opening - In any section of the specifications and/or plans where one or more manufacturers' brand names of materials or equipment is specified to indicate a quality, style, appearance or performance, the Bidder will base his bid on one of the specified brand names, except that where such certain brands are specified, alternate brands may also be qualified if found equal or better by submitting a request to the Engineer for review and approval at the earliest date possible but in any event such request shall be submitted not later than ten (10) days before the opening date of bids, not including the date of bid opening. If the substitution requests are hand carried, the bearer shall be sure that the envelope containing the request or the request itself is time stamped by the receptionist. If the request is mailed, the hour of posting must be stamped by the postal authorities and be prior to 12 midnight of the Monday preceding the week of the bid opening. Commercial meter stamp on mailed notices will not be accepted should the mailed requests arrive after the deadline described above.

It shall be the responsibility of the Bidder to submit in five (5) copies, sufficient evidence such that a determination can be made by the Engineer that the alternate brands are qualified. The evidence submitted shall be accompanied by a cover letter of transmittal which shall give a list of the evidence submitted and list specifically the items for which the substitution is requested as shown in the following format:

<u>SECTION</u>	<u>ITEM</u>	<u>SPECIFIED BRAND</u>	<u>SUBSTITUTE OR ALTERNATIVE BRAND</u>
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This privilege to submit further evidence does not apply to requests which are rejected due to non-compliance with specification requirements. Once a substitution for an item is rejected due to non-compliance with the specifications and not due to insufficient evidence, the date of the initial request for substitution cannot be applied to a subsequent request on the same item.

Substitution requests not complying with the above requirements will be denied. Substitution requests sent to other agencies

and received by the Engineer after the deadline above will also be denied.

An addendum shall be issued to the specification to formally inform the prospective bidders of approved substitution of brand or brands which are equivalent to those specified and acceptable for use on the proposed project.

This addendum shall be mailed to prospective bidders five (5) days before the opening date of bids, not including the date of bid opening.

(b) After Bid Opening - Substitution of material or equipment will not be allowed after the bid date except when dictated by the following unforeseen circumstances:

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

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

The above shall not be construed to mean that substitutions for brand name specified materials and equipment will be allowed; the Engineer reserves the right to reject and deny any request he deems irregular or not in the best interest of the County.

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

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

6.4 TEST SAMPLES - The Engineer may require any or all materials to be subject to tests by means of samples or otherwise as he may determine. The Contractor shall afford such facilities as the Engineer may require for collecting and forwarding samples and shall not make use of or incorporate in the work any material represented by the samples until all required tests have been made and the material accepted. The Contractor in all cases shall furnish the required samples without charge. In the case of bituminous concrete pavement of any kind, the Contractor shall furnish for tests, when required, samples cut from the completed work. The areas of pavement so removed shall be replaced with new mixture and refinished. No additional compensation will be allowed for furnishing test samples and replacing the areas with new pavement.

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

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

6.6 STORAGE OF MATERIALS - Materials shall be stored so as to insure the preservation of their quality and fitness for the work. Unless otherwise provided the portion of the project site not required for public travel may be used for storage purposes and for the placing of the Contractor's plant and equipment, and any additional space required shall be provided by the Contractor at his expense. Materials shall not be stored upon the project site except when and as permitted by the Engineer. When considered necessary by the Engineer, material shall be placed on wooden platforms or other hard, clean

surfaces and under no circumstances shall it be in direct contact with the ground. They shall be placed under cover when so directed. Stored materials shall be so located as to facilitate prompt inspection.

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

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

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

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

The approval of any sample shall be only for the characteristics or for the use named in such approval and no other. Approval of a sample shall not be taken in itself to change or modify any contract requirement.

All samples will be provided by the Contractor at no extra cost to the project or to the County.

SECTION 7 - LEGAL RELATIONS AND RESPONSIBILITY

7.1 LAWS TO BE OBSERVED - The Contractor at all times shall observe and comply with all Federal, State, and local laws or ordinances in any manner affecting the conduct of work and shall indemnify and save harmless the State and the County and its representatives against any claim arising from the violation of any such law, by-law or ordinance by the Contractor, subcontractor, or by their respective employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications or contract for work in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing. All chapters and sections hereinafter cited are references to the Hawaii Revised Statutes.

- (a) Hours of Labor (Section 104-2 - No laborer or mechanic employed on the job site of any public work of the State or any political subdivision thereof shall be permitted or required to work on Saturday, Sunday or legal holiday of the State or in excess of eight hours on any other day unless he receives compensation for all hours worked on Saturday, Sunday or legal holiday of the State or in excess of eight on any other day at a rate not less than one and one-half times his basic hourly rate of pay. For the purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Director of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborers and mechanics on projects of similar character in the State.

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

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

The rates of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the job site and a copy of such wages required to be posted be given to each laborer

and mechanic employed under the contract by the Contractor at the time he is employed, provided that where there is a collective bargaining agreement the Contractor does not have to provide his employees the wage rate schedules.

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

In accordance with the provisions of Section 103-54, the bidder shall submit the requisite certification relative to conditions of employment and shall comply with said conditions during the period of the contract.

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

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

- (d) Citizen Labor (Section 103-57) - No person shall be employed as a mechanic or laborer upon any public work carried on by the County whether the work is done by contract or otherwise, unless such person is a citizen of the United States or eligible to become such a citizen provided, however, that in the cases where it is not reasonably practicable to obtain such persons with those qualifications, persons without such qualifications may, with the approval of the Governor, be employed until persons with such qualifications competent for such services can be obtained.

- (e) Use of Explosives (Chapter 376) - When the use of explosives is necessary for the prosecution of the work, the Contractor shall use the utmost care not to endanger life or property. The storage and use of explosives shall be in strict accordance with the provisions of Chapter 376 and Rule XVI of the State Department of Labor and Industrial Relations and any amendments thereto.
- (f) Preference for Hawaii Products (Section 103-32, 103-41 through 103-48) - In order to comply with the intent of this law the bidder must complete the form provided in the proposal which lists all of the applicable Hawaii Products.
- (g) Preference for American Products (Section 103-24) - It is the intent of the Engineer that all products called for in the bidding document be of American origin. However, this does not preclude the use of foreign products. In the event a bidder desires to utilize a foreign product, the same shall be considered a substitution and subject to Subsection 6.2 "SUBSTITUTION OF MATERIALS AND EQUIPMENT", of these specifications.
- (h) Workmen's Compensation Insurance (Chapter 386) - All workmen employed on the project shall be insured during the entire duration of the contract in accordance with the provisions of Chapter 386.
- (i) Tax Clearance (Section 103-53) - Final settlement of the contract will not be made until the Engineer has received a tax clearance from the Tax Department to the effect that all delinquent taxes levied or accrued under State statute against the Contractor have been paid. (Income Assessment and Audit Division and Taxation Division).
- (j) Industrial Safety - The Contractor shall take safety precautions and prosecute all work in accordance with Section 376-2 to Section 376-10. The Contractor's attention is directed to the "General Safety Code" prepared by the Department of Labor and Industrial Relations which in addition to the above sections of the statutes shall be complied with in all respect during the period of the contract.
- (k) Listing of Joint Contractor and/or Subcontractors (Section 103-29, and 103-33) - All bidders shall include the name and nature and scope of work to be performed by each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract.

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

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

7.3 PERMITS AND LICENSES - The Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incident to the due and lawful prosecution of the work.

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

7.5 BARRICADES, DANGER, WARNING AND DETOUR SIGNS - The Contractor shall provide, erect and maintain as directed by the Engineer, all necessary barricades, suitable and sufficient red lights, danger signals and signs, provide a sufficient number of watchmen and take all necessary precautions for the protection of the work and the safety of the public. Work areas closed shall be protected by effective barricades on which shall be placed acceptable warning signs. All barricades and obstructions shall be illuminated at night and all lights for this purpose shall be kept burning from sunset to sunrise. Except as otherwise provided in the specifications, full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various contract items of work or lump sum bid and no additional compensation will be allowed therefor. The rule and regulations of the State Highway Safety Act shall be complied with.

7.6 PRESERVATION AND RESTORATION OF PROPERTY, TREES, MONUMENTS, ETC. - The Contractor shall be responsible for the preservation of all public and private property, trees, monuments, etc., along the adjacent to the project; shall use every precaution necessary to prevent damage or injury thereto; shall use suitable precaution necessary to prevent damages to pipes, conduits and other

underground structures; and shall protect carefully from disturbance or damage all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. The Contractor shall not injure or destroy trees or shrubs nor remove or cut them without proper authority. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work, or in consequence of the non-execution thereof on the part of the Contractor, such property shall be restored by the Contractor and at the Contractor's expense, to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring same, or he shall make good such damage or injury in an acceptable manner. If the Contractor fails to carry out the provisions of this subsection, the Engineer shall have the right to have them carried out and deduct the same from any money due or to become due the Contractor.

7.7 RESPONSIBILITY FOR DAMAGE CLAIMS - The Contractor and surety shall save harmless the State, County and all of its representatives from all suits, actions or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the work or through the use of unacceptable materials in the construction of the improvement or on account of any act or omission by said Contractor or his agents.

The Contractor guarantees the payment of all just claims for materials, supplies, tools, labor and other just claims against him or any subcontractor in connection with this contract and his bond will not be released by final acceptance and payment by the Department unless all such claims are paid or released, or so much of the monies due or to become due the Contractor, under this contract as shall be considered necessary by the Engineer may be retained by the Department.

The Contractor shall save harmless the government and all of its representatives from all suits, actions or claims of any character brought on account of any claims or amounts arising or recovered under the Workmen's Compensation laws or any other laws, by-law, ordinance, order or decree.

Should any suit or claim be filed against the Contractor, the Engineer shall retain, from any monies due to the Contractor, such amount or amounts as may be deemed necessary by the said Engineer until such suits or claims have been finally settled and determined and upon satisfactory evidence of such settlement of such suits or claims the money retained shall be paid to the Contractor.

7.8 CONTRACTOR'S RESPONSIBILITY FOR WORK - Until acceptance by the Engineer of any part of all of the construction as provided for in these specifications, it shall be under the charge and care of the Contractor, and he shall take every necessary precaution against injury or damage to any part of the work by the action of the elements or from any other cause whatsoever, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore and make good at his own expense all injuries or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance. The Contractor shall be responsible for coordinating the work of all trades on the job and shall be liable for the acts of the sub-contractors as the prime contractor on the project.

7.9 PERSONAL LIABILITY OF PUBLIC OFFICIALS - In carrying out any of the above provisions or in exercising any power or authority granted to him by this contract, there shall be no liability upon said Engineer or his authorized assistants, either personally or as an official of the County it being understood that in such matters, he acts as the agent and representative of the County.

7.10 NO WAIVER OF LEGAL RIGHTS - The Engineer shall not be precluded or estopped by any measurements, estimate or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the contract. The Engineer shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and his sureties such damages as it may sustain by reason of his failure to comply with the terms of the contract. Neither the acceptance by the Engineer or any representative of the Engineer, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Engineer shall operate as a waiver of any portion of the contract, or of any power herein reserved, or any right to damage herein provided. A waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

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

7.12 INSURANCE - The Contractor shall not commence any work under contract until he has obtained from responsible insurance companies all insurance as required herein, and the Contractor shall maintain this insurance in full force and effect until the work to be performed has been accepted by the Engineer. These policies shall be executed and delivered to the Chief Engineer.

(a) Builders Risk

1. New Buildings - The Contractor shall take out a policy of builder's risk insurance, for the full insurable value of the insurable improvements of the project from a company licensed to do business in the State of Hawaii, naming the Department as co-insured under each policy, covering all work, labor and materials furnished by such Contractor and all his subcontractors against loss by fire, wind, storm, lightning, explosion and other perils included in the standard broad form of extended coverage.
2. Building Renovation Contract - The Contractor shall take out insurance in the amount equivalent to the contract amount, with the Department named as co-insured under each policy, covering all work, labor and

materials furnished by such contractor and all his subcontractors against loss by fire, wind, storm, lightning and explosion.

3. Site Development - The Contractor is not required to obtain builder's risk insurance but required to obtain other insurance specified in Article 7.12 Insurance. However, if any building or structure is constructed or renovated on site development contracts, either items 1) New Buildings, or 2) Building Renovation Contract, above, shall apply.
- (b) Workmen's Compensation - The Contractor shall, in accordance with Section 186-121 to 186-129 inclusive, Hawaii Revised Statutes, take out adequate workmen's compensation insurance for all of his employees who will be engaged in work at the site of the project, and in case any part of such Contractor's contract is sublet, the Contractor will require his subcontractor to maintain such insurance for all the subcontractor's employees who will be so engaged, unless the latter's employees are protected by the principal Contractor's insurance.
- (c) Public Liability and Property Damage Insurance - The Contractor shall take out adequate public liability and property damage insurance as determined by the Engineer to protect such Contractor and all of his subcontractors from claims for damages for personal injury and accidental death which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. The policies shall not contain any clause to the effect that the insurer is not liable on account of any accident out of work performed by subcontractors or their employees.

Minimum Coverage

Public Liability Insurance - One Hundred Thousand Dollars (\$100,000) for a single person and Two Hundred Thousand Dollars (\$200,000) for one accident.

Property Damage Insurance - Fifty Thousand Dollars (\$50,000).

SECTION 8 - PROSECUTION AND PROGRESS

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

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

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

8.2 WORKING HOURS - Prior to beginning operations, the Contractor shall notify the Engineer in writing of the time in hours and minutes, A.M. and P.M., respectively, at which he desires to begin and end the day's work.

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

Work in excess of eight(8) hours in any one day or on Saturday, Sunday or legal holiday of the State is permissible when approved by the Engineer in

writing, or as called for elsewhere within the specifications. No work shall be done at night unless permission is obtained as set forth in the above paragraph.

8.3 OVERTIME PAYMENT FOR COUNTY INSPECTION SERVICE - In addition to complying with the administrative requirements as stated in Subsection 8.2 for overtime work and payment, the Contractor must pay for the required overtime inspectional services rendered by the County unless otherwise instructed in the contract.

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

- (a) The cost of salaries for the engineering and inspectional personnel as determined by the County in accordance with the Overtime Work Regulations, Part III, Rule 3: Sections 3.1 to 3.7, inclusive of the County Personnel Rules and Regulations dated September 9, 1969, as amended. In addition to the cost of the salaries as determined above, the Contractor shall reimburse the County's share of contributions to the employees' retirement, medical plan, social security, vacation, sick leave, workmen's compensation funds, per diem, and other applicable fringe benefits and overhead expenses.
- (b) The transportation cost incurred by the Department employees in connection with the engineering and inspectional work.
- (c) The flat rate for overtime charges covering (a) and (b) above shall be set at \$13.00 per hour in conformance to Ordinance No. 336 (1970), Inspection costs.

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

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

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

No overtime work will be done by the Contractor without the presence of at least one authorized County Inspector unless otherwise directed by the Engineer.

8.4 PROGRESS SCHEDULE - Before commencing work on the project, the Contractor shall submit to the Engineer six (6) complete sets of the progress schedule showing thereon the various divisions of the work and his proposed sequence of operations such as painting, hardware installation, plumbing, roofing, etc.

If required by the Engineer, the Contractor shall within ten (10) consecutive working days submit supplementary progress schedules which shall indicate approximately the percentage of work scheduled for completion at any time. The Engineer may also request for a revised progress schedule to reflect the actual progress of the project and also changed incorporated in the contract.

8.5 LIMITATIONS OF OPERATIONS - The Contractor shall at all times conduct the work in such manner and in such sequence as will insure the least practicable interference with traffic and passage ways and he shall have due regard to furnish convenient detours.

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

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

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

8.6 ASSIGNMENT OF CONTRACTS AND CLAIMS - The Contractor shall not assign nor otherwise transfer this contract or any part hereof or any interest herein or any monies due or to become due hereunder without the prior written consent of the Engineer. The consent to assignment or transfer shall not operate to relieve the Contractor or his sureties of any of his or its obligations under this contract nor will the Engineer consent to any assignment of a part of the work under the contract.

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

8.7 CHARACTER OF WORKMEN OR EQUIPMENT - The Contractor shall at all times provide adequate supervision and sufficient labor and equipment for prosecuting the several classes of work to full completion in the manner and within the time required by the contract.

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

Any foreman or workman employed on the project by the Contractor or by any subcontractor who, in the opinion of the Engineer or his authorized representative, is not careful and competent, does not perform his work in a proper and skillful manner or is disrespectful, intemperate, disorderly or neglects or refuses to comply with directions given, or is otherwise objectionable shall, at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing such foreman or workman and shall not be employed again in any portion of the work without the written consent of the Engineer. Should the Contractor or subcontractor continue to employ, or again employ such person or persons on the project, the Engineer will withhold all estimates which are or may become due, or the Engineer will suspend the work until such orders are complied with.

- (b) Insufficient Workmen - In the event that the Engineer, in his judgment, finds the condition whereby insufficient workmen are present to accomplish the work and no corrective action is taken by the Contractor after being informed, the Engineer reserves the right to terminate the contract as provided for under Subsection 8.12 "TERMINATION OF CONTRACT".
- (c) Equipment Requirements - All equipment furnished by the Contractor and used on the work shall be of such size and of such mechanical condition that the work can be prosecuted in an acceptable manner at a satisfactory rate of progress and the quality of work is satisfactory. All equipment, tools, and machinery used for handling materials and executing any part of the work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition.

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

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

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

- (a) For delays caused by or suspension due to unsuitable weather conditions or adverse conditions resulting therefrom, the Contractor shall be granted one working day extension for each working day delay due to such causes.

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

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

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

his findings of the facts thereon shall be final and conclusive.

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

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

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

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

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

When the performance of the work is totally suspended for one or more working days by order of the Engineer in accordance with Subsection 8.9(a) and 8.9(c), the number of days from the effective date of the Engineer's order to suspend operations to the effective date of the Engineer's order to resume operations shall not be counted as working days. Days elapsing during any period of suspension in accordance with Subsection 8.9(b) shall be counted as working days. During periods of partial suspension of the work, the number of working

days to be charged shall be computed by multiplying the number of working days of original contract time by the ratio of the amount earned during the period of partial suspension to the original contract amount. In no case shall the number of working days to be charged as contract time for a period of partial suspension exceed the total elapsed time in working days of the partial suspension.

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

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

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

8.9 SUSPENSION OF WORK - The Engineer may, by written order, suspend the performance of the work, either in whole or in part for such periods as he may deem necessary due to:

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

Suspension of work on some but not all items of work shall be considered a "partial suspension". Suspension of work on all items shall be considered "total suspension". The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to resume.

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

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

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

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

8.10 DISPUTES - In case the Contractor deems extra compensation is due him for work or materials not clearly covered in the contract, or not ordered by the Engineer as an extra, the Contractor shall notify the Engineer in writing of his intention to make claim and shall afford the Engineer every facility for keeping actual cost of the 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 a 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. When the work has been completed, the Contractor shall within ten (10) consecutive working days file his claim in writing for extra compensation with the Engineer who will review the claim and render his decision which shall be final.

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

8.11 FAILURE TO COMPLETE THE WORK ON TIME - It is mutually agreed by and between the parties hereto that time shall be an essential part of this contract and that in case of the failure on the part of the Contractor to complete his contract within the time specified and agreed upon, the County of Hawaii will be

damaged thereby; and the amount of said damages, inclusive of expenses for inspection, superintendence and necessary traveling expenses, being difficult if not impossible of definite ascertainment and proof, it is hereby agreed that the amount of such damages shall be the appropriate sum set forth below in the Schedule of Liquidated Damages as liquidated damages for every working day's delay in finishing the work in excess of the number of working days prescribed; and the Contractor hereby agrees that said sum shall be deducted from monies due the Contractor under the contract or if no money is due the Contractor, the Contractor hereby agrees to pay to the County of Hawaii as liquidated damages, and not by way of penalty, such total sum as shall be due for such delay, computed as aforesaid.

SCHEDULE OF LIQUIDATED DAMAGES

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

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

8.12 TERMINATION OF CONTRACT - The contract of which these specifications form a part may be terminated by the Engineer for any one of the following reasons: Substantial evidence that the progress being made by the Contractor is insufficient to complete the work within the specified contract time; failure to prosecute or complete the work expeditiously at any time; or failure on the part of the Contractor to observe any other parts of the specifications; failure of the Contractor to start the work ten (10) consecutive working days after the date given in the notice to proceed; failure of the Contractor promptly to make good any defects of any nature, the correction of which has been directed in writing by the Engineer; substantial evidence of collusion for the purpose of illegally procuring a contract or perpetuating fraud on the County in the construction or work under contract; or after award has been made, the Contractor makes changes in his list of subcontractors or joint contractors submitted in his proposal, which in the opinion of the Engineer are unjustifiable and substantive.

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

1. Failure, refusal or inability of a subcontractor named in the Contractor's original list to enter into a subcontract.
2. Insolvency of the subcontractor.
3. Inability of the subcontractor to furnish a reasonable performance bond.
4. Suspension or revocation of the subcontractor's license.
5. Inability of the subcontractor to comply with other requirements of the law applicable to contractors, subcontractors and public works projects.

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

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

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

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

The right is reserved to take possession and to use if necessary any machinery, implements, tools or materials of any description that shall be found

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

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

8.13 FINAL ACCEPTANCE OF CONTRACT - Written final acceptance of the contract will be made after the Contractor remedies all discrepancies noted at the final inspection and submits the following items.

- (a) Tax Clearance
 - 1. Clearance Certificate (Income Assessment and Audit Division)
 - 2. Division of Taxation.
- (b) Certificates of plumbing inspection, electrical inspection and building occupancy as required.
- (c) All guarantees required by the contract shall be made in writing.
- (d) Satisfactory evidence that all claims for all persons, firms or corporations who have done work or supplied materials, tools, equipment, machinery or other commodities or services have been paid or satisfactorily secured.
- (e) Certificate of release from each subcontractor.
- (f) Certificate of release from surety or bonding company.
- (g) Non-Gratuity Affidavit (See Appendix D for Sample of Affidavit)
- (h) As-built plans as required by the contract shall be drawn on reproducible contract drawings furnished by the County.
- (i) All other documents as required by the contract.

Immediately upon receiving the formal letter of acceptance of the contract, the Contractor will be relieved of the duty of maintaining and protecting the work as a whole, relieved of his responsibility for injury to persons or property or damage to the work which occurs after the formal acceptance by the Engineer, and he will not be required to perform any further work thereon except as set forth in the specifications.

8.14 FINAL SETTLEMENT OF CONTRACT - The contract will be considered complete when all work has been completed and accepted in accordance with the provisions of Subsections 5.10 and 8.13. The date of approval by the Engineer of the final voucher for payment shall constitute the date of final settlement of the contract. This action will not preclude consideration of any claim which the Contractor, by appropriate statement on the final voucher, has reserved the right to submit in connection with the contract. The Contractor will then be released from further obligations except as set forth in the contract.

8.15 GUARANTEE OF WORK

- (a) Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of defective or inferior materials, equipment or workmanship for one year or as otherwise noted in the technical specifications from the date listed in the letter of final acceptance of the contract. All guarantee of work shall be transmitted in writing.
- (b) If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Engineer is rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract, the Contractor shall within five (5) days and without expense to the County commence to:
 - 1. Place in satisfactory condition in every instance all of such guaranteed work, correct all defects therein; and
 - 2. Make good all damages to the building or work or equipment or contents thereof.
- (c) Whenever manufacturers' guarantee on any product specified for the project exceeds one year, this guarantee shall become part of this contract thereof.

SECTION 9 - MEASUREMENT AND PAYMENT

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

All measurements of the area of the various surface, pavement and base courses will be made in the horizontal projection of the actual surface and no deductions will be made for fixtures having an area of nine (9) square feet or less. All measurements of headers, curb, fences and any other type of construction which is to be paid for by its length, will be made in the horizontal projection of the actual length, (except piles, which will be by actual length). All materials which are specified for measurement by the cubic yard "Loose Measurement" or "Measured in the Vehicle" shall be hauled in approved vehicles and measured therein at the point of delivery on the road. Approved vehicles for this purpose may be of any type or size satisfactory to the Engineer, provided that the body is of such type that the actual contents may be readily and accurately determined. Unless, all approved vehicles on a job are of uniform capacity, each approved vehicle must bear a plainly legible identification mark indicating the specific approved capacity. The inspector may reject all loads not hauled in such approved vehicles.

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

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

9.4 PAYMENT FOR ADDITIONAL WORK - Additional work as defined in Subsection 4.2(d), when ordered, shall be paid for under an approved change order in accordance with the terms provided herein. Work performed for approved change order shall be paid in accordance with Subsection 9.4(a) "NEGOTIATED WORK". If the change order is protested, work shall be done and paid in accordance with Subsection 4.2(e) "FORCE ACCOUNT WORK" and Subsection 9.4(b) "FORCE ACCOUNT WORK" respectively.

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

For equipment used 3 consecutive working days or less, the hourly rental rate shall be the daily rate divided by 8; for equipment used 4 consecutive working days or more, but not over two (2) consecutive weeks, the hourly rental rate shall be the weekly rate divided by 40; for equipment used over two (2) consecutive weeks, the hourly rental rate shall be the monthly rate divided by 175. These rates shall include the cost of fuel, lubricants and repairs. The hourly rate for the operators for the various equipment shall be by the contract wage schedule.

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

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

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

To the sum of the costs of labor, materials and equipment (including the 15% applied to the labor and materials costs), there shall be added a gross income tax equal to four percent (4%) thereof.

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

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

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

The Contractor and Engineer, or their authorized representatives, shall compare records of the work performed on a force-account basis at the end of each day. Copies of these records shall be made on suitable forms and signed by both the Contractor and Engineer, or their representatives. These daily reports shall thereafter be considered the true record of the force-account work done.

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

9.5 DEDUCTIONS FROM PAYMENTS - The County may withhold from the Contractor so much of the accrued payments as the County may consider necessary to pay to laborers and mechanics employed by the Contractor or any subcontractor on the jobsite the difference between the wages required by the contract or specifications and the wages actually received.

9.6 PARTIAL PAYMENTS - If, in the judgement of the Engineer as reflected in Subsection 8.8 "STATEMENT OF CONTRACT TIME", the work is progressing satisfactorily, the Engineer shall make an estimate each month based on the items of work performed and materials incorporated in the work and the value thereof at the unit prices set forth in the contract and may include therein an allowance not to exceed ninety percent (90%) of the invoice cost of acceptable materials delivered at the site of the work but not incorporated in the work at the time of making the estimate. These estimates will be approximate only and will be subject to correction at any time prior to or in the final estimate. The State will retain five percent (5%) of the amount thus ascertained in the plans and paid to the Contractor. It is provided, however, that after progress has been determined and established by the Engineer, no additional sum shall be withheld; provided further, that if progress is not satisfactory, the County may continue to withhold as retainage sums not exceeding five percent (5%) of the amount due the Contractor. Should the Contractor wish to withdraw from time to time the whole or any portion of the sum retained, a government bond with a market value not less than the sum to be withdrawn must be deposited pursuant to an agreement reached between the County and the Contractor. (Act 167/SLH 1976, HB 934)

9.7 FINAL PAYMENT - Whenever the work provided for by the contract shall have been completely performed on the part of the Contractor and all parts of the work having been approved by the Engineer, the final inspection and final acceptance made, a final estimate showing the value of the work done will be prepared by the Engineer as soon as the necessary measurements can be made. The amount of this estimate, less any sums that may have been deducted in accordance with the provisions of the contract and less all previous payments, will be paid to the Contractor within thirty (30) days after the final estimate has been approved by the Engineer, provided the Contractor has submitted and the Engineer has accepted as satisfactory the items listed in Subsection 8.13 in addition to those outlined above.

9.8 PAYMENT FOR PURCHASE ORDERS - The Department will not make partial payment on purchase orders for work completed to date on furniture and equipment. However, payment for purchase orders will be made in full when the Contractor has successfully fulfilled the requirements according to the plans and specifications and acceptance of the work by the Engineer.

SECTION 10 - VALUE ENGINEERING INCENTIVE

The following clause is applicable only when the project contract exceeds \$100,000. Whenever VECP is mentioned in the following paragraphs, it shall mean "Value Engineering Change Proposal". (Section 103-49, Hawaii Revised Statutes)

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

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

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

Rules and regulations regarding Value Engineering Incentive in Public Works contracts is filed with the Department of Finance under Part 3 of its Rules and Regulations of the Director of Finance (adopted April 30, 1970, by the County Council) and with the County Clerk.

See Appendix "C" for sample of V. E. C. P. Form.

SECTION 11 - ENVIRONMENTAL PROTECTION

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

11.1 RUBBISH DISPOSAL

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

11.2 DUST

- a. Dust shall be kept down at all times, including non-working hours, weekends and holidays, by sprinkling water. For areas planted with ground cover and grass, payment for sprinkling water for dust control will not apply as soon as planting is initiated and thereafter. Such sprinkling shall be considered as maintenance, and its cost shall be included in the lump sum bid price exclusive of the Dust Control sprinkling allowance.

Work done by the Contractor in complying with this requirement shall be done and paid for in accordance with Subsection 4.2 (e) "FORCE ACCOUNT WORK" and Subsection 9.4(d) "FORCE ACCOUNT WORK" of the General Requirements and Covenants, respectively.

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

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

11.3 NOISE

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

11.4 EROSION

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

11.5 OTHERS

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

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

11.6 SUSPENSION OF WORK

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

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

The Engineer may also suspend any operations which he feels are creating pollution problems although they may not be in violation of the above mentioned requirements. In this instance, the work shall be done by force accounts as described in Subsection 4.2(e) "FORCE ACCOUNT WORK" of the General Requirements and Covenants and paid for in accordance with Subsection 9.4(b) "FORCE ACCOUNT WORK" therein. The count of elapsed working days to be charged against the contract in this situation shall be computed in accordance with Subsection 8.8(d) "CONTRACT TIME" of the General Requirements and Covenants.

A P P E N D I X A

Sample: Contract Form

C O N T R A C T

THIS AGREEMENT, made and entered into this _____ day of _____
 A.D. 19____, by and between the COUNTY OF HAWAII, a municipal corporation duly
 organized and existing under the laws of the State of Hawaii, by its Mayor,
 _____ party of the first part, and _____
 _____ party of the second part.

W I T N E S S E T H:

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

in accordance with plans for said project, No. _____, on file in the office of
 the Chief Engineer, proposal, detail and standard specifications, and general
 conditions hereto annexed, which plans, proposal, specifications and general con-
 ditions, including any and all additions thereto or deductions therefrom are hereby
 made a part hereof, and to complete the same on or before the _____ day of
 _____, A.D. 19____, or on or before such later date as may be
 fixed in accordance with said specifications. The additions or extras under this
 contract will not exceed the sum of _____
 _____ Dollars (\$ _____).

For and in consideration of the covenants, undertakings and agreements of the
 party of the second part herein set forth and upon the full and faithful perfor-
 mance thereof by the party of the second part, the party of the first part, hereby
 agrees to pay to the party of the second part, the sum of _____
 _____ Dollars (\$ _____),
 in lawful money of the United States of America, such payments to be made, however,
 on the conditions hereto annexed and made a part hereof, and subject to such addi-
 tions thereto or deductions therefrom or hereafter made in accordance with the
 provisions of such specifications, general conditions and this agreement.

IN WITNESS WHEREOF, the party of the first part has caused this agreement to
 be executed at Hilo, Hawaii, County and State of Hawaii; and the party of the
 second part has caused this agreement to be executed at _____
 _____ Hawaii, State of Hawaii, as of the day and year first
 above written.

COUNTY OF HAWAII
 BY ITS MAYOR

 Witness By

 Its Mayor

 Witness By

 Contractor

A P P E N D I X B

Sample: Bond Form

P E R F O R M A N C E B O N D

KNOW ALL MEN BY THESE PRESENTS, THAT _____

whose principal place of business is in _____, Hawaii, as principal and _____

as surety, are held and firmly bound unto the County of Hawaii, a municipal corporation duly organized and existing under the laws of the State of Hawaii, its successors or assigns, in the full and just sum of _____

Dollars

(\$ _____), in lawful money of the United States of America, for the payment of which to the said County of Hawaii, its successors or assigns well and truly to be made, said principal and said surety hereby bind themselves and their respective successors or assigns jointly and severally firmly by these presents.

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

The condition of this obligation is such that is the above bounded principal _____ shall fully and faithfully perform and fulfill all the requirements and stipulations contained and set forth in and by contract dated _____, entered into by said principal for

all in accordance with plans for said project, Job No. _____, on file in the office of the Chief Engineer, conforming in all respects to the stipulations, covenants and said contract as it now exists or may be modified according to its terms, and shall promptly pay all just claims for labor and materials used in the prosecution of the work provided for in the aforesaid contract; and shall deliver the said work to the said County of Hawaii or to its successors or assigns fully completed as in said agreement specified free from all liens and claims and without further cost, expense or charge to the said County of Hawaii, its successors or assigns, than is agreed to or provided for in said agreement, and shall save the said County of Hawaii, its officers or agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the said principal

or _____ legal representatives, agents or servants or the improper performance of the said work by said principal or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

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

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said contract as liquidated damages shall be considered as and held to be fixed and liquidated damages to be forfeited to the County of Hawaii, its successors or assigns, in the event of a breach of any or all or any part of the covenants, conditions, stipulations, or promises contained in said contract and this obligation, in accordance with the terms thereof; that the right of action contemplated under and by provisions of Sections 103-34 and 507-17, Hawaii Revised Statutes, shall inure to the benefit of any and all persons entitled to file claims for labor and materials furnished said contractor.

WITNESS:

PRINCIPAL

SURETY

A P P E N D I X C

Sample: V.E.C.P. Forms

Sample: Change Order Estimate Form

Sample: Change Order Form

Sample: Proposal Envelope Form

VALUE ENGINEERING CHANGE PROPOSAL
(Contractor Required Information)

From: _____ Date: _____
 To: Chief Engineer, Dept. of Public Works VECP No. _____
 Project: _____ Contract No. _____
 Location: _____

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

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

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

REMARKS:

Rec'd. by Gov't.	Gov't Representative: (s)	Contractor's Representative: (s)
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VALUE ENGINEERING CHANGE PROPOSAL
(Contractor Summary Submittal)

From: _____ Date: _____
 To: Chief Engineer, Department of Public Works VECP No. _____
 Project: _____ Contract No. _____
 Location: _____

SUMMARY OF CHANGE (Description - Compare advantages and disadvantages)

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

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

DATE BY WHICH A CHANGE ORDER MUST BE ISSUED

SO AS TO OBTAIN MAXIMUM COST REDUCTION

Rec'd. by County

County Representative:

(s)

Contractor's Representative:

(s)

SAMPLE FORM

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII

C H A N G E O R D E R E S T I M A T E

Contractor _____

Project Title _____

Order No. _____

Job No. _____

Date _____

Contract No. _____

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

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

Submitted by:

CONTRACTOR

TITLE

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII

CHANGE ORDER

Contractor.....

Project Title

Job No.

Order No.

Contract No.

Date.....

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

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

STATEMENT OF FUNDS

A. Original contract amount \$

B. This change order amount \$

C. Previously approved change orders

D. Total change order amount (all approved & proposed C.O.)

E. New contract amount \$

TIME EXTENSION

F. Original contract time Wkg. da. Completion date

G. Time ext. previously granted Wkg. da. Completion date

H. Time ext. granted under this change order Wkg. da.
[(D ÷ $\frac{A}{E}$) - G] New Completion date

Submitted by:

Noted with Approval:

Bureau Head, DPW Date

Director of Finance Date

Recommended for Approval:

Approved as to Form and Legality:

Chief Engineer Date

Corporation Counsel Date

Accepted:

Approved:

Contractor Date

Mayor Date

To be opened at the
OFFICE OF THE CHIEF ENGINEER
DEPARTMENT OF PUBLIC WORKS
County Building, Hilo, Hawaii 96720

At ____ o'clock ____ M, ____ 19 ____

Job No. _____

PROPOSALS FOR

To The MAYOR
COUNTY OF HAWAII

HILO, HAWAII 96720

BIDDER MUST USE THIS ENVELOPE
IN SUBMITTING TENDER

BIDDER _____

A P P E N D I X D

Sample: Non-Gratuity Affidavit

NON-GRATUITY AFFIDAVIT

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

Contractor _____

Contract No. _____

COUNTY OF HAWAII)
) SS:
STATE OF HAWAII)

The undersigned hereby certifies that he is the _____
(title)

of _____; that in connection with the above
(name of partnership or corporation)
contract/project, he or its officers, representatives, agents, subcontractors
or employees have not given or made any agreement to give any County of Hawaii
employee, the employee's relatives or agents any gift of money or otherwise,
or anything of value; has not been influenced by any County of Hawaii employee,
the employee's relatives or agents in the renting or purchasing of any equip-
ment or supplies of any nature whatsoever.

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

Notary Public, Third Judicial
Circuit, State of Hawaii.

My commission expires:_____.