

solely to the variation above one hundred fifteen per cent or below eighty-five per cent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Officer-in-Charge shall, upon receipt of a timely written request for an extension of time, prior to final payment of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Officer-in-Charge the findings justify. Any adjustment in the contract price shall be in accordance with section 6.9, "Price adjustment." [HAR 3-125-10]

(b) All quantities appearing in the RFP are approximate, and those indicated in the RFP are prepared for the comparison of proposals only. The City does not, expressly or by implication, warrant that the actual quantities will correspond therewith. The Contractor understands and has included in its proposed prices, the entire cost of the performance of the contract, and it is understood and agreed that there is included in each lump sum or unit priced item, the entire cost of any and all items incidental to the performance of the contract covered by such lump sum or unit priced item. By submittal of its proposal, the Contractor certifies that it has verified these quantities in a manner deemed necessary or expedient.

5.8 Value engineering incentive. The Contractor may develop and submit value engineering change proposals for drawings, designs, specifications, or other requirements of the contract in accordance with HAR 3-132-1 et seq.. If any proposal is accepted and approved, in whole or in part, by the Officer-in-Charge, the contract shall be modified and shall include an equitable adjustment of the contract price in accordance with this section.

This section shall not apply to any cost reduction proposal that is not identified as a value engineering change proposal by the contractor at the time of its submission to the Officer-in-Charge.

Exhibit "J" titled "Value Engineering Change Proposal" may be used to initiate a value engineering change proposal.

CHAPTER 6 – PAYMENT; PRICE ADJUSTMENTS

6.1 Payment. (a) The Contractor shall be paid the contract price as full compensation for the performance of the contract. Should there be a discrepancy between the basis of payment outlined in the standard specifications and that called for in the Contract, the Contract shall govern. If an error, omission or misstatement shall be discovered in the quantities or measurements stated in the Contract, the same shall not vitiate the contract, or release the Contractor or his surety or sureties from performing the contract, or affect the price agreed to under the contract, or excuse the Contractor from any of the obligations or liabilities under the contract, or entitle him to damages or compensation, except as provided herein.

(b) Each application or request for payment shall be based upon the most recent schedule of payment submitted by the Contractor and accepted by the City in accordance with the terms of the Contract, the sum of which shall not exceed the total Contract amount. Each request shall be supported by data to substantiate its accuracy. The schedule of payment must be approved by the officer-in-charge, prior to any progress payments.

Requests for payment must include the following documents before the City is obligated to make any payment under this Contract:

- (1) A copy of the City-approved schedule of payment;
 - (2) A certificate by the Contractor of the percentage of completion of each position of the work as well as the materials that have been obtained by the Contractor and accepted by the officer-in-charge as of the end of the period covered by the request for payment; and
 - (3) An updated monthly critical path method (CPM) schedule for the Project that shows:
 - (A) Any Contractor claimed event of delay;
 - (B) The impact of the event of delay on the critical path of the Project; and
 - (C) The current revised critical path based upon the event of delay.
- (c) Lump sum contracts.
- (1) For lump sum contracts, the contract price shall be the result obtained by first reducing the amount designated as the total sum proposed in the award by the amount included therein for allowances and contingencies, and adding thereto or deducting therefrom any extra cost or any reduction in cost, respectively, to the City as a result of supplemental agreements in writing and written orders.
 - (2) Lump sum contract prices include all materials, equipment, labor and all other incidental work required for the complete construction and installation of the lump sum product, all in accordance with the plans and specifications. Payment will be made only for the item in place complete, regardless of the amount of material, equipment and labor necessary to complete the same in a proper and workmanlike manner and in accordance with the plans and specifications.
- (d) Unit priced items. Payment shall be made for the actual quantities of units incorporated into the contract multiplied by the unit prices of the contract items, when the unit work or items are in place complete, provided that where the quantity of any item varies more than fifteen per cent above or below the estimated quantity stated in the contract, payment shall be made at the adjusted unit price in accordance with section 5.7, "Variations in estimated quantities."

6.2 Allowance items. Payment for allowance items shall be included in the monthly estimate for progress payment upon submittal of paid invoices. Unless otherwise specified in the RFP, the Contractor shall be reimbursed from the allowance items as follows:

- (1) For utility allowance, no markup of any kind will be allowed.
- (2) For off-duty police officers, the reimbursement shall also include the administrative fees charged by the Honolulu Police Department, plus twenty per cent inclusive of any administrative costs, overhead/profit, bond fee, and applicable taxes.

6.3 Mobilization. (a) Mobilization shall consist of preparation work and operations, including but not limited to those necessary for the movement of personnel, equipment, supplies and incidentals to the project site; for the acquisition of all work materials; for the establishment of all offices; buildings, and other facilities, excluding field office and project site laboratories, necessary for work on the project; and

for all other work and operations which must be performed, or costs incurred, prior to beginning work on the various items on the project site.

(b) **Maximum allowed amount for mobilization.** Where there is an item in the RFP for mobilization, unless otherwise specified, the maximum offer allowed for this item is an amount not to exceed six per cent of the total sum of all items within the group of items in which the mobilization item is included, excluding the price of the mobilization item. If the proposal submitted by the offeror indicates an amount in excess of the allowable maximum, the amount or amounts submitted by the offeror shall be reduced to the allowable maximum, and the total sum offer shall be adjusted to reflect any such reduction. For the purpose of comparing offers and determining the contract price to be inserted in the contract awarded to the offeror, if any is so awarded, the sum of all items adjusted in accordance with the foregoing shall be used and the offeror's proposal shall be deemed to have been submitted for the amounts as reduced and adjusted in accordance herewith.

(c) **Payment.** Mobilization will be paid for on a lump sum basis. Partial payments will be made as follows:

- (1) When five per cent of the total sum offer is earned, fifty per cent of the amount proposed for mobilization will be paid;
- (2) When ten per cent of the total sum offer is earned, seventy-five per cent of the amount proposed for mobilization will be paid; and
- (3) When twenty per cent of the total sum offer is earned, one hundred per cent of the amount proposed for mobilization will be paid.

Nothing herein shall be construed to limit or preclude partial payments otherwise provided for by the contract. The cost for demobilization shall be considered incidental to the mobilization and no further allowances will be made for such.

6.4 Payments during performance of work. Monthly estimate and payment. The Officer-in-Charge shall, not later than the fifteenth day of each month during the performance of the contract, make an estimate of the amount of work completed in accordance with the contract during the immediately preceding month for the construction items listed in the performance schedule described in section 4.2(d), "Payment and performance schedules." In arriving at an estimate of work completed during the month, the Officer-in-Charge shall deduct sufficient allowance for any incomplete or unprotected work or to provide for any contingencies for remedy of defects or damage to said work or for the necessity of performing any part of the work over again to cure defects or damage.

6.5 Retention. (a) Retention for satisfactory progress. Pursuant and subject to Section 103-32.1, HRS, if the Officer-in-Charge finds that satisfactory progress is being made:

- (1) Progress payments to the Contractor for the work completed for the month shall be for a sum equal to ninety-five per cent of the above estimate (after accounting for any deductions and contingencies), less previous payments and sums withheld by the City pursuant to subsection (a).
- (2) After the first fifty per cent of the work to be performed under the contract has been completed and progress is satisfactory, progress payments will be for one hundred per cent of the above estimate less:

(A) Five per cent withheld from the previous payments to the Contractor during the performance of the first fifty per cent of work required under the contract;

- (B) Other sums withheld by the City pursuant to the contract; and
- (C) Previous payments.

(b) Unsatisfactory progress. The Officer-in-Charge may continue to make progress payments to the Contractor for a sum equal to ninety-five per cent of the above estimates, less previous payments and sums withheld by the City pursuant to the contract until such time that satisfactory progress is achieved by the Contractor.

(c) The retention amount withheld by the Contractor from its subcontractors of any tier shall not be more than the same percentage of retainage as that of the Contractor, where a subcontractor has provided evidence to the Contractor of:

- (1) A valid performance and payment bond for the project that is acceptable to the Contractor and executed by a surety company authorized to do business in this State;
- (2) Any other bond acceptable to the Contractor; or
- (3) Any other form of collateral acceptable to the Contractor. [HRS 103-32.1]

Where subcontractor does not provide the above-listed performance and payment bonds, retainage by the Contractor (of subcontractor's billings) shall be in accordance with HRS 103-32.1(e).

(d) A written notice of any withholding shall be issued to a subcontractor, with a copy to the Contracting Officer, specifying the following:

- (1) The amount to be withheld;
- (2) The specific causes for the withholding under the terms of the subcontract; and
- (3) The remedial actions to be taken by the subcontractor to receive payment of the amounts withheld.

(e) Any retainage provided for in this Section or requested to be withheld by the Contractor shall be held by the Contracting Officer.

(f) A payment request made by a Contractor to the Officer-in-Charge that includes a request for sums that were withheld or retained from a subcontractor and are due to the subcontractor may not be approved under HRS 103-10.5(e), unless the payment request includes:

- (1) Substantiation of the amounts requested; and
- (2) Certification by the Contractor, to the best of the Contractor's knowledge and belief, that:
 - (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
 - (B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - (C) The payment request does not include any amounts that the Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

(g) Contractor shall comply with all provisions of HRS 103-32.1 relating to retainage requirements.

(h) Delay in completion of work. Upon written request from the Contractor, if the completion of the work under the contract is being delayed through no fault of the Contractor, the Contractor may request for the release of all or part of the amount withheld. The Contracting Officer, upon recommendation of the Officer-in-Charge, may make additional payments from the amount withheld to the extent that such amount withheld is not required for the protection of the City. The Contracting Officer may require the Contractor to submit tax clearances from the State and Internal Revenue Service and surety clearance as a condition to the release of any retention.

(i) Substitution with general obligation bonds. Pursuant to HRS 103-32.2, the Contractor may request, and the Contracting Officer, upon recommendation of the Officer-in-Charge, may enter into an agreement to allow the Contractor to withdraw from time to time the whole or any portion of the sums retained as set forth above upon depositing with the Contracting Officer any general obligation bond of the State or its political subdivisions with a market value not less than one hundred ten per cent of the sum to be withdrawn.

6.6 Payment for delivered materials or equipment. (a) No payment for any material or equipment that is affixed, movable or removable, delivered to the site of the work under the contract will be made until said material or equipment is incorporated into the parts of the project required to be constructed under the contract. Payment for the delivered material or equipment shall be included in the monthly progress payment under the appropriate cost item. Each progress payment shall include the completed "Report of Equipment Purchased with Construction Contracts" (Form BFS-P-79), Exhibit "L." Whenever payment is requested for delivered equipment that is movable or removable, two copies of the list of such equipment must be attached to the report. The list shall include the equipment description, make, model, serial number, quantity, cost, an indication of whether or not the equipment is movable or removable, and the specific location of the equipment such as the room number. The amount included for payment under this subsection shall be subject to the retention requirement. Approval of progress payment shall be contingent upon the submission of the report (Form BFS-P-79) and the equipment list.

(b) Specialized or special ordered materials, equipment. The Officer-in-Charge may, to the extent provided for in the contract, include in the monthly estimate for progress payment the delivered cost of specialized materials, special ordered materials or equipment usable only for the contract. Such inclusion in the monthly estimate will be allowed only if all costs are substantiated by evidence of delivery and payment, and only for such materials or equipment as are specifically described or referred to in the contract as being the subject matter for such inclusion in the monthly estimate for progress payment. *The progress payment shall include the "Report of Equipment Purchased with Construction Contracts" and a list of the movable and removable equipment as described in Section 6.6(a).* Payment to the Contractor shall not terminate the Contractor's responsibility or ownership of such materials or equipment until incorporated in place and accepted by the Officer-in-Charge. The Contractor shall be responsible for the safekeeping of such specialized materials or equipment until incorporated into the work and accepted by the Officer-in-Charge. The amount included for payment under this subsection shall be subject to the retention requirement.

(c) Movable or removable equipment. Movable or removable equipment as specified in subsection (a) is defined as any item that can be removed with a hand tool, or can be moved or transferred to another location, or can be tagged with an identification number. The City policy is that such equipment shall be

budgeted and purchased with equipment phase funds.

6.7 Final Payment. (a) Final Payment. After final acceptance by the Officer-in-Charge, the Contractor will be paid the balance due in accordance with the Officer-in-Charge's final estimate of the construction actually performed and approved by the Contractor, provided that final payment will be made only with the approval of the Contracting Officer or, for improvement districts, the City Council, and upon submittal of the following to the Contracting Officer:

- (1) Completed form BFS-P-79, "Report of Equipment Purchased with Construction Contracts," in accordance with Section 6.6;
- (2) Whenever the payment includes payment of movable or removable equipment, two copies of the list of equipment installed or provided under the contract, listing the description, make, model, serial number, quantity, cost, an indication of whether or not the equipment is movable or removable, and the specific location of the equipment such as the room number, in accordance with Section 6.6;
- (3) Written consent of the surety or sureties on the Contractor's bonds;
- (4) Completed form DF-P-65 (Exhibit "K"), acknowledging any outstanding claims arising out of the performance of the Contractor's work; and
- (5) Evidence of continuing insurance as required in section 3.1.
- (6) Contractor is required to submit a tax clearance certificate from the director of taxation from the State and the Internal Revenue Service. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to a tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), Exhibit "M," will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the Procurement of Goods, Services and Construction-Chapter 103D, HRS, menu.

(b) Failure to comply. If the Contractor delays or fails to comply with the requirements of this Section, the Contracting Officer, upon recommendation of the Officer-in-Charge and without further obligation to the Contractor, may take any or all of the following actions:

- (1) Upon notice from the State Department of Taxation or Internal Revenue Service, assign payment to the appropriate tax agency.
- (2) Unilaterally, use the final payment estimate of the Officer-in-Charge as the final payment to the Contractor.
- (3) Determine the Contractor to be nonresponsible which may jeopardize the Contractor's future status as a qualified offeror.

(c) Upon final payment to the Contractor, full payment to all subcontractors shall be made in accordance with Section 6.11, "Prompt payment by contractors to subcontractors." [HRS 103-10.5; HAR 3-125-23]

6.8 Payment does not imply acceptance of work. The granting of any payment by the City, or the receipt thereof by the Contractor, shall in no way imply acceptance of work. The unsatisfactory character

of such work, equipment, components or workmanship that do not conform to the requirements of this Agreement may be rejected by the City and in such case must be replaced by the Contractor without delay.

6.9 Price adjustment. (a) Method and manner of reaching price adjustment. Any adjustment in contract price made pursuant to the contract shall be determined in one or more of the following ways [HRS 103D-501(b); HAR 3-125-13]:

- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance;
- (2) By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
- (3)
- (3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
- (4) In any other manner as the parties may mutually agree upon before commencement of the pertinent performance;
- (5) In the absence of agreement between the parties, the provisions of Section 103D-501(b)(5), HRS, shall apply.

(b) For mutually-agreed changes, the allowances for all overhead, extended overhead resulting from adjustments to contract time (including home office and field overhead) and profit combined, shall not exceed the percentages set forth below:

- (1) For the Contractor, for any work performed by its own labor forces, fifteen percent of the cost;
- (2) For each subcontractor involved, for any work performed by its own forces, fifteen percent of the cost;
- (3) For the Contractor or any subcontractor, for work performed by their subcontractors, seven percent of the amount due the performing subcontractor.

(c) In the absence of agreement between the parties, where the Contractor and the Officer-in-Charge cannot agree to the price adjustment of any change in work:

- (1) For change orders with value not exceeding \$50,000 by documented actual costs of the work, allowing for twenty per cent (20%) of the actual costs for overhead and profit on work done directly by the Contractor and ten per cent (10%) on any subcontractor's billing to the Contractor for the Contractor's overhead and profit ("Force Account"); or
- (2) For change orders exceeding \$50,000 by a unilateral determination by the Officer-in-Charge of the costs attributable to the events or situations under clauses with adjustment of profit or fee, all as computed by the Officer-in-Charge in accordance with applicable sections Chapters 3-123 and 3-126 of the HAR ("Unilateral Determination"). [HRS § 103D-501(b)(5)(A)]

(d) Cost or pricing data.

- (1) Application. Application for cost or price adjustment shall be made pursuant to HAR 3-122-121 et seq. For any adjustment exceeding \$100,000, the Contractor shall submit cost or pricing data and certification of that data except as provided for in paragraph (3). Certification shall be in the form attached herein as Exhibit "H." For adjustments less than \$100,000, the Officer-in-Charge may, upon written determination that the circumstances warrant submission of cost or pricing data, require cost or pricing data.

(2) Cost or pricing data defined. Cost or pricing data mean all facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiation significantly. Such data are factual, not judgmental, and are therefore verifiable. They are facts that can reasonably be expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred including such facts as:

- (A) Vendor quotations;
- (B) Nonrecurring costs;
- (C) Information on changes in production methods and in production or purchasing volume;
- (D) Data supporting projections of business prospects and objectives and related operation costs;
- (E) Unit cost trends such as those associated with labor efficiency;
- (F) Make or buy decisions;
- (G) Labor union contract negotiations; and
- (H) Information on management decisions that could have a significant bearing on costs.

(3) Exceptions. Cost or pricing data are not required if the price is based on contract unit prices, adequate competition (as in receiving bids or quotations from various subcontractors or suppliers for changed work), established catalogue prices or market prices, or prices set by law or regulation. However, the Officer-in-Charge may request cost or pricing data if the Officer-in-Charge considers that such price is not reasonable.

(4) Submission of cost or pricing data and certification. The Contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provision of Section 103D-312, HRS. The submission of any cost or pricing data shall be made subject to the provisions of subchapter 15, Chapter 3-122. A fully executed change order or other documents permitting billing for the adjustment in price under any method listed in Section 6.9(a)(1)-(4) shall be issued within 10 days after agreement on the method of adjustment. Cost or pricing data shall be submitted to the Officer-in-Charge prior to beginning price negotiations. The Contractor shall submit certification of that data in the form attached herein as Exhibit "H," as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of the date of reaching agreement on price. Certification constitutes a representation as to the accuracy of the data upon which the Contractor's judgment is based. A certificate of current cost or pricing data shall not substitute for examination and analysis of the Contractor's proposal.

(e) Defective cost or pricing data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or not current as of the date stated in the certificate, the City is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data.

If the Contractor and the Officer-in-Charge cannot agree as to the existence of defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the Officer-in-Charge shall set an amount in accordance with the provisions of HAR 3-122-121 et seq., and the Contractor may appeal this decision as a contract controversy under chapter 3-126, HAR.

6.10 Force account. When the Contractor and the Officer-in-Charge cannot agree to the price adjustment of any change in work, the Officer-in-Charge may, in accordance with section 6.9, "Price adjustment," require that the work be performed under force account until such time that an equitable adjustment can be agreed to by both parties, provided that the Officer-in-Charge promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. Payment for work under force account shall be as follows: [HAR 3-125-4, 3-125-13]

- (a) Allowable costs. In force account, cost shall be the sum of the costs of the following:
- (1) Labor. The Contractor shall receive the current wage rate including fringe benefits for actual work engaged by the hourly worker and foreman in charge of the specific force account work. Fringe benefits are required amounts established by the State Department of Labor and Industrial Relations, any collective bargaining agreement and other employment contract generally applicable to the classes of labor employed. The Contractor shall submit the fringe benefits for each class in writing to the Officer-in-Charge for acceptance before the force account work begins. The wages for labor shall not exceed the rate of wages paid for similar labor performed under the contract, as evidenced by the record of the Contractor's payroll on file with the Officer-in-Charge.

For salaried workers, the Officer-in-Charge will determine the hourly wage rate by dividing the monthly salary plus benefits by one hundred seventy-six hours. The Officer-in-Charge shall authorize salary workers to perform the work.

For overtime work, payment will be for one and a half times the hourly wage rate plus the actual hours of overtime for fringe benefits, and/or as required by any collective bargaining agreement. For authorized salaried workers, payment will be for the hourly wage rate times the actual hours of overtime.

- (2) Materials. The Contractor will receive the actual cost of materials accepted by the Officer-in-Charge and entering permanently into the work under the contract including transportation charges as shown by the invoices submitted to the Officer-in-Charge.

For stock materials, used and incorporated into the work, the Contractor shall receive the actual cost as certified by the Contractor to the cost paid by the Contractor. The Officer-in-Charge will include transportation charges and taxes paid by the Contractor.

- (3) Machinery and equipment, other than small tools and minor equipment, which may be necessary or desirable to perform the work. The Officer-in-Charge may reject any machinery or equipment which the Officer-in-Charge deems unnecessary, inefficient or inadequate for the work to be performed. The term "small tools and minor equipment" shall include individual equipment or tools having a replacement value of two hundred fifty dollars or less, whether or not they are consumed in the use thereof.

(A) The rate shall be the per-hour rental rate based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Blue Book for Construction Equipment including the estimated operating cost per hour, and regional correction provided therein.

The hourly rate will be determined by dividing the monthly rate by one hundred and seventy-six. The rate includes the estimated operating cost per hour and the regional correction factor. If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rate shall be as agreed upon in writing by the Contractor and the Officer-in-Charge prior to the use of said machinery or equipment. The Contractor shall provide proof of the rental rates charged.

(B) For trucks not owned by the Contractor, rental rates as those established under the Hawaii State Public Utilities Commission will be used to determine the cost and will be paid for as a material item under paragraph (3).

(C) For Contractor-owned trucks not listed in the Rental Rate Blue Book, the rates shall be as agreed upon in writing by the Contractor and the Officer-in-Charge prior to the use of said trucks.

(D) Rental rates which are higher than those specified in the Rental Rate Blue Book may be allowed where such higher rate can be justified by job conditions such as work in water, on lava, etc. Request for higher rate shall be submitted in writing to the Officer-in-Charge for approval prior to the use of the machinery or equipment in question.

(E) All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.

(F) Transportation and/or mobilization

(i) The location from which the equipment is to be moved or transported shall be approved by the Officer-in-Charge.

(ii) Payment will be made for mobilizing and transporting the equipment or machinery to the force account work site, including loading and unloading, and back to its original location or other site, whichever cost is less. The cost of transportation shall not exceed the rates established by the Hawaii State Public Utilities Commission. If rates are nonexistent, then the rates will be determined by the Officer-in-Charge based upon the prevailing rates charged by established haulers within the locale.

(iii) Payment for self-propelled equipment or machinery will be for the cost of moving the equipment by its own power to the force account work site and back to the original location or other site, whichever cost is less.

(iv) When transporting equipment or machinery by other than its own power, payment shall be made for the transporter, if owned by the Contractor, at the hourly rate including the estimated operational rate and the applicable regional correction factor. Payment for the transporter, if not owned by the Contractor, shall be by invoice cost and paid for as a material item. Payment for the equipment or machinery shall be at the rate of "idle time" under (G).

(v) Payment for mobilization and transportation will not be made if the equipment or machinery is used on the work in any other way than upon extra work paid for under force account.

(G) Rental period

(i) Idle time. Idle time herein means the period in which the machinery or equipment designated for the specific force account work is not in use for the work. The time period shall be for a working day (8 hours). Payment shall be fifty per cent of the hourly rate excluding the estimated operational cost per hour per working day.

(ii) Standby time. Standby time herein means the period in which the machinery or equipment are standing by for the specific force account work day. A work day shall not exceed eight hours (standby time plus the operating time) unless the Officer-in-Charge authorizes the overtime. Payment shall be at the hourly rate including the estimated operational cost per hour per working day.

(iii) The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the Officer-in-Charge directs the discontinuance of the use of the machinery or equipment.

(iv) Less than thirty minutes of operation will be considered a half hour of operation.

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

(vi) When force account work is completed within less than 8 hours, payment shall be for 8 hours.

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

(viii) Overtime shall be paid for each hour in excess of the normal 8-hour shift work day at the corresponding hourly rate for daily, weekly, and monthly rates.

(4) State excise and use tax. State excise tax not to exceed the current rate and will be added to the total sum of paragraphs (1) through (3).

(5) When work is performed by a subcontractor who has been approved pursuant to Section 4.3, "Joint contractors; subcontractors," the Contractor will receive an additional amount equal to ten per cent of the total cost of paragraphs (1) and (3), to which shall be added the State excise tax.

(6) Percentages for fee and overhead. Not more than three line item percentages for fee and overhead, not to exceed the maximum percentages shown in subsection 6.9(c), will be allowed regardless of the number of tier subcontractors. [HAR 3-125-13]

(7) Payment for the above shall be deemed payment in full for work done under force account including superintendence, overhead, use of tools, machinery and equipment for which no rental is allowed, profit, taxes, subcontracting and other costs in connection therewith which are not provided for herein. **No payment will be made until itemized records along with receipted invoices and appropriate documents have been submitted and approved.**

(b) Records. The Contractor shall submit records of the above to the Officer-in-Charge at the end of each day on Daily Force Account Report sheets (Form DF-49), Exhibit "G," issued by the Officer-in-Charge. Such records submitted shall be subject to the approval of the Officer-in-Charge as evidenced by the Officer-in-Charge's signature thereon. The Contractor shall submit a statement covering the cost of all of the above items not later than the tenth day of the month following the month in which the costs were incurred.

6.11 Prompt payment by Contractors to subcontractors.

(a) Any money paid to Contractor for work performed by a subcontractor shall be disbursed to the subcontractor within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the Contracting Officer has withheld payment.

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

(c) Penalties. The Contracting Officer or the Contractor, as applicable, will be subject to a penalty of one and one-half per cent (1-1/2%) per month upon outstanding amounts due that were not timely paid by the responsible party under the following. Where a subcontractor has provided evidence to the Contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in subsection (d) below, and:

(1) Has provided to the Contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or

(2) The following has occurred:

(A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to Contractor and the surety, as provided for in Section 103D-324, HRS; and

(B) The subcontractor has provided to the Contractor an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the Contractor, any other bond acceptable to the Contractor, or any other form of mutually-acceptable collateral.

Then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the Contracting Officer to the Contractor and subsequently, upon receipt from the Contracting Officer, by the Contractor to the subcontractor within the applicable time periods specified in subsection (b) and Section 103-10, HRS. The penalty may be withheld from future payment due to the Contractor, if the Contractor was the responsible party. If a Contractor has violated subsection (b) three or more times within two years of the first violation, the Contractor shall be referred by the Contracting Officer to the contractor license board for action under Section 444-17(14), HRS. [HRS 103-10.5(c); HAR 3-125-23.]

(d) A properly documented final payment request from a subcontractor, as required by subsection (c), shall include:

(1) Substantiation of the amounts requested;

(2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the

proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(C) The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

(3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The Contracting Officer shall return any fiscal payment request that is defective to the Contractor within seven days after receipt, with a statement identifying the defect.

(e) In the case of a construction contract, a payment request made by a contractor to the Contracting Officer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under subsection (c) unless the payment request includes:

(1) Substantiation of the amounts requested; and

(2) A certification by the Contractor, to the best of the Contractor's knowledge and belief, that:

(A) The amounts requested are only for performance in accordance with the specifications, terms and conditions of the contract;

(B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(C) The payment request does not include any amounts that the Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

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

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

6.12 Payment in bonds. When the contract is for an improvement district project, payment to the Contractor may be made in either cash or improvement district bonds.

6.13 Authority to withhold money due or payable. (a) Withholding money due or payable. The City may withhold such amounts from the money due or to become payable under the contract to the Contractor, or any assignee under section 2.11, "Assignment of money," as may be necessary to:

(1) Protect the City from any liability resulting from the work performed under this contract;

(2) Satisfy any obligation of the Contractor to the City, State Department of Taxation or Internal Revenue Service, including obligations not relating to the contract as required by law, and the obligation of the Contractor to the workers, subcontractors, and suppliers who have performed

labor or furnished material and equipment under the contract as the Contracting Officer deems necessary, but only with the concurrence of or instructions from the Contractor's surety; or
(3) Repair, restore, or compensate for, any real or personal property located within the project site or in the vicinity thereof which was damaged as a result of the fault or negligence of the Contractor while performing the work under this contract.

(b) Making payment from money withheld. The City may make such payments from such amounts withheld for reasons specified in subsection (a); provided, that before making any payment for damages to property prescribed in subsection (a)(3), the Officer-in-Charge shall request the Contractor in writing to undertake the repair or restoration of the damaged property or make compensation therefor. If the Contractor fails or refuses to make such repair, restoration, or compensation to the satisfaction of the Officer-in-Charge **within seven days** after notification by the Officer-in-Charge, the Contracting Officer, upon recommendation of the Officer-in-Charge and upon the Contracting Officer's own findings that such recommendation is justified, may make the necessary payments.

6.14 Interest. Interest on amounts ultimately determined to be due to Contractor shall be payable at the statutory rate applicable to judgments against the State under Chapter 622 from the date the governmental body receives notice of the written notice through the date of decision or judgment, whichever is later; except that if an action is initiated in circuit court pursuant to Section 103D-711, interest under this section shall only be calculated until the time such action is initiated.

CHAPTER 7 - DISPUTES AND REMEDIES

7.1 Suspension of work. (a) The Officer-in-Charge may, by written order, suspend the work, either in whole or in part for periods as the Officer-in-Charge may deem necessary for any cause, including but not limited to:

- (1) Weather or soil conditions considered unsuitable for prosecution of the work;
- (2) Failure on the part of the Contractor to:
 - (A) Correct conditions unsafe for the general public or for the workers;
 - (B) Carry out orders given by the Officer-in-Charge;
 - (C) Perform the work in strict compliance with the provisions of the contract;
 - (D) Provide adequate supervision on the jobsite; or
 - (E) Maintain current liability insurance coverages.
- (3) Whenever a redesign that may affect the work is deemed necessary by the Officer-in-Charge;
- (4) Unacceptable noise or dust arising from the construction even if it does not violate any law or regulation; or
- (5) The convenience of the City. [HAR 3-125-7]

(b) Partial and total suspension. Suspension of work on some but not all items of work shall be considered a "partial suspension." Suspension of work on all items shall be considered "total suspension." The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to resume. [HAR 3-125-7]

(c) Reimbursement to Contractor. In the event that the Contractor is ordered by the Officer-in-Charge in writing as provided herein to suspend all or part of the work under the contract in accordance with