

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 77

CONTRACTORS

Subchapter 1 General Provisions

- §16-77-1 Authority
- §16-77-2 Objective
- §16-77-3 Definitions
- §16-77-4 Licenses required

Subchapter 2 Processing Licensing Applications

- §16-77-6 Application for license
- §16-77-7 Repealed
- §16-77-8 Responsibility of applicant to furnish information; notice by the board
- §16-77-9 Signing and verification of application
- §16-77-10 Supporting documents required
- §16-77-11 Denial of license application
- §16-77-12 Application fees
- §16-77-13 When partnership or joint venture requires a license
- §16-77-14 Posting of information in license application
- §16-77-15 Action on applications

Subchapter 3 License Qualifications

- §16-77-18 Experience requirement
- §16-77-19 Power of board to approve training as experience
- §16-77-20 Power of board to accept equivalent knowledge

Subchapter 4 Conditional License

- §16-77-24 Power of board to issue conditional licenses

Subchapter 5 Classification

§16-77-28 All contractors classified

Subchapter 6 Scope of Classifications

§16-77-32 General engineering, general building, and specialty contractors

§16-77-33 Limitation of classifications

§16-77-34 Work incidental and supplemental

§16-77-35 Additional classifications

Subchapter 7 Examinations

§16-77-39 Examination - part I

§16-77-40 Examination - part II

§16-77-41 Examination not required

§16-77-42 Use of interpreters

§16-77-43 Notice of examination

§16-77-44 Passing grade

§16-77-45 Failure to pass examination

§16-77-46 Examination misconduct

Subchapter 8 Renewal of Licenses

§16-77-49 Notice of renewal

§16-77-50 Date for filing

§16-77-51 Restoration of forfeited license

§16-77-52 Board may refuse to renew

§16-77-53 Proper filing authorizes contractor to operate

§16-77-54 Renewal fees

§16-77-55 Conditions for renewal of license

§16-77-56 Inactive status

Subchapter 9

§16-77-59 Repealed

Subchapter 10 Suspension, Revocation, Dissociation, Dissolution

§16-77-63 Alternatives in lieu of revocation or suspension

- §16-77-64 Notice due board on death, dissociation, or disability of RME; forfeiture of license
- §16-77-65 Board jurisdiction to proceed

Subchapter 11 Ownership and Management of License

- §16-77-69 License issued
- §16-77-70 Direct management of the contracting business
- §16-77-71 Principal and subordinate RMEs
- §16-77-72 RME for more than one contracting entity
- §16-77-73 License nontransferable
- §16-77-74 Repealed
- §16-77-75 Revocation, suspension, termination, withdrawal, forfeiture, and refusal to renew license of RME; fines
- §16-77-76 Maintenance of bond

Subchapter 12 Disclosure to Owners; Contracts

- §16-77-79 Disclosure to homeowners
- §16-77-80 Homeowner contracts

Subchapter 13 Advertising Practices

- §16-77-83 Advertising through the media

Subchapter 14 Place of Business

- §16-77-87 All licensees to have place of business
- §16-77-88 Change of address
- §16-77-89 Place of business for out-of-state licensees

Subchapter 15

- §16-77-93 Repealed

Subchapter 16 Responsibility for Good Workmanship

- §16-77-97 Performance

Subchapter 17 Recovery and Education Funds

- §16-77-100 Recovery fund assessments

§16-77-101 Use of education fund fees

Subchapter 18 Administrative Procedures

§16-77-105 Administrative practice and procedure

§16-77-106 Oral testimony

§16-77-107 Referral for hearing

Subchapter 19 Asbestos Contractors

§16-77-111 Definitions

§16-77-112 License required

§16-77-113 Requirements for license

§16-77-114 Training requirements

§16-77-115 Examination

§16-77-116 Conditions for renewal of license; refresher training courses

§16-77-117 Revocation, suspension, and renewal of license

SUBCHAPTER 1

GENERAL PROVISIONS

§16-77-1 Authority. Authority to adopt rules by the board is found in chapter 444, Hawaii Revised Statutes. [Eff 8/14/80; am and ren §16-77-1, 6/22/81; am and comp 11/7/83; comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §444-4)

§16-77-2 Objective. The board interprets the primary intent of the legislature in creating the contractors license board to be the protection of the public health, safety, and general welfare, in dealing with persons engaged in the construction industry, and affording to the public effective and practical protection against the incompetent, inexperienced, unlawful, and unfair practices of contractors with whom the public contracts. All rules adopted by the board shall be interpreted and construed in light of the policies set forth in this section. [Eff 8/14/80; am and ren §16-77-2, 6/22/81; am and comp 11/7/83; comp 4/14/88; comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §444-4)

§16-77-3 Definitions. As used in this chapter or in chapter 444, HRS:

"Board" means the contractors license board.

"Building permit" means and includes any type of permit issued or required by the county or other local subdivision of the State as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure.

"Contracting entity" means any individual who has met the experience and financial integrity requirements for a license to engage in the contracting business or a corporation, partnership, joint venture, limited liability company, or other entity who has met the financial integrity requirements to engage in the contracting business and who has in its employ, a responsible managing employee.

"Current credit report" means a credit report covering at least the previous five years and issued within six months of the application date.

"Current financial statement" means a financial statement prepared within twelve months of the application date.

"Current proof of payment arrangement" means a payment arrangement issued by the department of taxation within six months of the application date, or September 30 of the even-numbered year if renewing a license.

"Current state tax clearance" means a tax clearance issued within six months of the application date, or September 30 of the even-numbered year if renewing a license.

"Employee" as used in section 444-2(6), HRS, means an individual who receives wages as sole compensation from, and works under the supervision of, an employer who is a contracting entity and who is liable for paying the social security and unemployment taxes on the individual and provides workers' compensation coverage for the individual.

"Fabrication" as used in defining the scope of work in various specialty classifications means field fabrication as opposed to shop fabrication which does not require a contractor's license.

"Financial integrity" means financial responsibility, financial capacity, and history of personal integrity to operate as a contractor and to engage in the contracting business.

"Home improvement contracting" means undertaking or holding oneself out as being able to undertake directly or indirectly renovation, remodeling, repairing, or otherwise improving a residential property for compensation.

"Owner builder exemption" means an owner or lessee of property is exempt from the contractors license law if the structure to be built or improved is for the owner's or lessee's own personal use and not for use or occupancy by the general public; provided that the structure so built or improved is not offered for sale or lease in its entirety or in part within one year after its completion; and, provided further

that the owner or lessee registered for the exemption as provided in section 444-9.1, HRS.

"Partnership" includes, without limitation, general partnerships, limited partnerships, and limited liability partnerships.

"Responsible managing employee" or "RME" means the individual who is a bona fide employee of the contracting entity that maintains a current contractor's license, and who qualifies the contracting entity for a contractor's license in the licensed classifications held by the individual.

"SEC" means the Securities and Exchange Commission. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-2, 444-4, 444-9.1, 444-11)

§16-77-4 Licenses required. (a) No person within the purview of this chapter shall act, or assume to act, or advertise, as a contractor, general engineering contractor, general building contractor, or specialty contractor without a license previously obtained under and in compliance with this chapter and chapter 444, HRS.

(b) A license may be required for work which poses a potential danger to public health, safety, and welfare even if there may be less than ten persons qualified to perform the work.

(c) Any individual, salesperson, associations of salespersons or entity who solicits for or negotiates a contract or offers to undertake construction work on behalf of more than one contractor shall be treated as a contractor and shall be required to have a contractor's license. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-2, 444-9) (Imp: HRS §§444-2, 444-4, 444-9, 444-11)

SUBCHAPTER 2

PROCESSING LICENSING APPLICATIONS

§16-77-6 Application for license. (a) Each applicant for a contractor's license shall fully complete the application form and submit all supporting documents before the application will be accepted. The application is designed to obtain from the applicant the following:

- (1) A complete statement of the general nature of the applicant's contracting business;
- (2) If the applicant is an individual, the applicant's name and address; if a partnership, the names and addresses of all partners and RME(s); if a

corporation, the names and addresses of all officers and RME(s); if a joint venture, the names and addresses of the members thereto, their officers, and RME(s); if a limited liability company, the names and addresses of all members, managers, and RME(s). Persons acting in any of the capacities set forth in this paragraph shall be deemed to be personnel or employees of the applicant;

- (3) A complete record of all previous experience of the applicant (individual or RME) in the field of construction;
- (4) Whether the applicant or the applicant's personnel or employees, or anyone with whom the applicant or the applicant's personnel has been associated with in the contracting vocation, has ever been licensed or had a professional or vocational license refused, suspended, terminated, forfeited, revoked, or otherwise disciplined; and
- (5) Proof that the applicant has currently satisfied all of the applicable requirements of the department's business registration division.

(b) Nothing in this section shall limit the board's authority to seek from an applicant or applicant's personnel or associates any other information pertinent to the character, experience, reputation for honesty, truthfulness, financial integrity, and fair dealing, and past and future methods of doing business as may be deemed necessary in order to pass upon the applicant's qualifications. [Eff 8/14/80; am and ren §16-77-6, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp _____] (Auth: HRS §§444-4, 444-12) (Imp: HRS §§436B-11, 444-9, 444-10, 444-11, 444-12, 444-16)

§16-77-7 Repealed. [R 4/14/88]

§16-77-8 Responsibility of applicant to furnish information; notice by the board. (a) Each individual, RME, officer, director, member, manager, or partner of an applicant or of its joint venturers shall furnish the information requested in the forms prescribed by the board. Any trade name used by a contracting entity shall have been previously registered with the department's business registration division and shall be filed with the board. In the event of any change of information provided on the application, the applicant or the licensee shall notify the board in writing within ten business days of any change.

(b) Any requirement that the board provide notice under chapter 444, HRS, or this chapter shall be deemed met if notice is sent to the last known address on file with the board. [Eff 8/14/80; am and ren §16-77-8, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04;

comp
12, 444-14)

] (Auth: HRS §444-4) (Imp: HRS §§444-4, 444-9, 444-

§16-77-9 Signing and verification of application. Every application for a license shall be signed by the individual applicant or the applicant's authorized representative. Evidence of the authority of the authorized representative shall be filed with the application. [Eff 8/14/80; am and ren §16-77-9, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-9, 444-12) (Imp: HRS §444-12)

§16-77-10 Supporting documents required. (a) Every applicant shall furnish the following supporting documents:

- (1) A minimum of three notarized letters certifying the individual's or RME's history of honesty, truthfulness, financial integrity, and fair dealing, and experience qualifications in the classification(s) applied for;
- (2) A current credit report covering at least the previous five years of each individual applicant, RME, member of a joint venture, partner of a partnership, manager or member of a limited liability company, and each officer of a corporate entity unless the stock of that corporate entity is publicly traded in which case the requirements in paragraph (3) shall apply;
- (3) Corporate entities that are publicly traded shall, at a minimum, provide the following:
 - (A) Current credit reports of its RME(s);
 - (B) A copy of the prospectus currently filed with the SEC;
 - (C) If available, a copy of the current Standard and Poors, Dun and Bradstreet, or other similar board-approved credit rating report on the corporation;
 - (D) Copies of any proxy statements prepared in the last five years under the requirements of section 14 of the Securities and Exchange Act of 1934, as amended; and
 - (E) If the corporate entity has been publicly traded for:
 - (i) At least five years, the corporate entity shall provide copies of the Form 10-Ks filed within the last five years with the SEC pursuant to section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended; or

- (ii) Less than five years, the corporate entity shall provide copies of the Form 10-Ks currently filed with the SEC; provided that if the corporate entity meets all the other licensing requirements under this chapter and chapter 444, HRS, the corporate entity may be issued a conditional license under section 16-77-24 with the condition that, at a minimum, it continue to provide copies of its future Form 10-Ks filed with the SEC so that the board has at least five years of Form 10-Ks on file.
- (b) In addition to the requirements of subsection (a), every applicant, except an RME, shall be required to furnish the board with:
 - (1) A current financial statement prepared and signed by a holder of a certificate of certified public accountant or a registered public accountant in the form prescribed by the board;
 - (2) A current state tax clearance or current proof of payment arrangement from the department of taxation;
 - (3) In the case of an applicant who is:
 - (A) A corporation or limited liability company organized and existing under the laws of the State, a file-stamped copy of the articles of incorporation or articles of organization, respectively, on file with the department's business registration division;
 - (B) A foreign corporation, a file-stamped copy of the certificate of authority on file with the department's business registration division; and
 - (C) A domestic or foreign partnership, a copy of the registration statement on file with the department's business registration division.
 - (4) A copy of a workers' compensation certificate from an insurer authorized to conduct business in this State that indicates that the policy is in force; or proof that the person has been authorized to act as a self-insurer under chapter 386, HRS, or is excluded from the requirements of chapter 386, HRS. The board shall be notified of any cancellation, termination, or withdrawal of any policy. Applicants claiming an exclusion under chapter 386, HRS, shall submit and sign a statement claiming such exclusion to the board;
 - (5) A certificate of insurance from an insurance company or agency authorized to conduct business in this State, an unauthorized insurer in accordance with article 8 of chapter 431, HRS, or a risk retention or risk purchasing group in accordance with chapter 431K, HRS,

showing full policy coverage of the applicant for liability and property damage insurance with the following minimum limits of liability:

Bodily injury liability	\$100,000 each person \$300,000 each occurrence
Property damage liability	\$ 50,000 each occurrence; and

(6) Any surety bond imposed by the board.

(c) The supporting documents required by subsections (a) and (b) (1), (2), and (3) shall be provided with the application, and the documents required by subsections (b)(4), (5), and (6) may be submitted any time prior to issuance of a license.

(d) In the event of any change on these documents at any time, the applicant shall notify the board in writing within thirty days of any change of information. [Eff 8/14/80; am and ren §16-77-10, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-9, 444-11, 444-12)

§16-77-11 Denial of license application. (a) The board shall deny the issuance of a license when an application is insufficient or incomplete or where the applicant has failed to provide satisfactory proof that the applicant:

- (1) Meets the qualifications under section 444-11, HRS;
- (2) Is qualified by experience or training for the license sought;
- (3) Has the financial integrity to operate as a contractor. As proof of financial integrity, the board may require the applicant to post a surety bond as a condition for licensure; or
- (4) Meets any of the other requirements provided in chapter 444, HRS, or this chapter.

(b) The board may deny issuance of a license when the applicant is known to have committed any of the acts for which a license may be suspended or revoked under chapter 444, HRS, or this chapter.

(c) An application for a license shall be automatically rejected and the applicant shall be denied issuance of a license when:

- (1) The applicant or the applicant's RME, after having been notified to do so, fails to appear for the examination or reexamination, whichever the case may be. The executive officer, upon receiving a written request, may postpone the examination; provided that in no case shall the examination period extend over six months (refer to sections 16-77-43 and 16-77-45); or

(2) The applicant, after having been notified to do so, fails to pay the required fees, fails to file a surety bond as required pursuant to this chapter, or fails to comply with any of the requirements in the law or rules of the board within one hundred twenty days from date of notification.

(d) Any application for a license that has been denied shall remain in the possession of the board for two years and shall not be returned. [Eff 8/14/80; am and ren §16-77-11, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; am and comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-9, 444-10, 444-11, 444-11.1, 444-12, 444-15, 444-16.5, 444-17)

§16-77-12 Application fees. (a) Every application for a license shall be accompanied by the appropriate fees provided in chapter 16-53 and a contractors education fund fee of ten dollars. These fees may be paid by money order or check made payable to the "Department of Commerce and Consumer Affairs."

(b) For purposes of this chapter, the dishonoring of any check upon first deposit shall constitute a failure to meet the fee requirements. [Eff 8/14/80; am and ren §16-77-12, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§26-9, 444-4, 444-11, 444-12, 444-26) (Imp: HRS §§26-9, 444-9, 444-11, 444-12, 444-15, 444-26)

§16-77-13 When partnership or joint venture requires a license. (a) No further license is required when all members of the joint venture or all partners in the partnership submit evidence to the board that all members or partners hold current contractor's licenses; provided that work to be performed is in a classification held by one of the members or partners.

The board shall be notified in writing of all joint ventures and partnerships formed in this manner and the principal RME for the joint venture or partnership.

(b) Joint ventures and partnerships shall be required to obtain a license when any member of the joint venture or any partner in the partnership does not hold a current contractor's license. All unlicensed members in a joint venture or partners in a partnership shall submit current financial statements, credit reports, and a tax clearance, and any other information requested by the board along with the application for licensure.

(c) Except as otherwise provided by law, all joint ventures and partnerships shall be registered with the department's business registration division

prior to engaging in any contracting activity. Joint ventures and partnerships shall provide proof of the registration to the board at the time of application.

(d) A joint venture or partnership licensed under this section shall be required to notify the board of its dissolution within thirty days after its dissolution. Failure to notify the board of the dissolution within the thirty day period shall result in the licenses of the joint venture or partnership being automatically forfeited without a hearing.

(e) The license of a joint venture or partnership shall be automatically forfeited without a hearing if the license of a member or partner is suspended, revoked, terminated, withdrawn, forfeited, or refused to be renewed.

(f) Upon dissolution or forfeiture, the joint venture or partnership shall be prohibited from engaging in contracting and shall not bid upon or enter into new contracts. [Eff 8/14/80; am and ren §16-77-13, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp]
(Auth: HRS §444-4) (Imp: HRS §§444-2, 444-11, 444-11.1, 444-12)

§16-77-14 Posting of information in license application. Whenever an applicant has filed a complete application, the name and address of the applicant, and the names and addresses and official capacity of the applicant's RME(s), officers, members, managers, and partners shall be publicly posted, as part of the board's investigation under section 444-16, HRS, for not less than fourteen days. No license shall be issued until the expiration of the posting period. [Eff 8/14/80; am and ren §16-77-14, 6/22/81; am and comp 11/7/83; comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: §444-16) (Imp: HRS §§444-10, 444-14, 444-16)

§16-77-15 Action on applications. The board shall act upon the license application within one hundred and twenty days after the board's applications committee has determined that the application is proper. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-16) (Imp: HRS §§444-9, 444-16)

SUBCHAPTER 3

LICENSE QUALIFICATIONS

§16-77-18 Experience requirement. (a) Every individual applicant or RME shall have had, within the past ten years immediately preceding the filing of an

application, not less than four years of supervisory experience as a foreman, supervising employee, or contractor in the particular classification in which the applicant intends to engage as a contractor.

(b) Self-employed or unlicensed experience may be acceptable experience in the discretion of the board.

(c) Contracting entities shall qualify through an RME who meets these experience requirements. [Eff 8/14/80; am and ren §16-77-18, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-4, 444-7, 444-8, 444-9, 444-10, 444-11)

§16-77-19 Power of board to approve training as experience. The board in its discretion may approve certain technical training or business administration training as acceptable experience, but in no case shall the training count as more than one year of experience. [Eff 8/14/80; am and ren §16-77-19, 6-22/81; am and comp 11/7/83; am and comp 4/14/88; comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-4, 444-7, 444-8, 444-9, 444-10, 444-11)

§16-77-20 Power of board to accept equivalent knowledge. The board in its discretion may accept any reasonably equivalent knowledge, training, or experience of the applicant in lieu of a specific experience requirement if upon investigation it makes a detailed finding to that effect. [Eff 8/14/80; am and ren §16-77-20, 6/22/81; am and comp 11/7/83; comp 4/14/88; comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-4, 444-7, 444-8, 444-9, 444-10, 444-11)

SUBCHAPTER 4

CONDITIONAL LICENSE

§16-77-24 Power of board to issue conditional licenses. (a) The board may issue a conditional license, provided that the applicant or licensee submits in writing an agreement to comply with any condition the board may establish for the license, including but not limited to the provision that the license may be withdrawn at any time without a hearing upon determination by the board that the licensee has violated the conditions thereof or is otherwise not acting in the best interest of the public in the licensee's contracting business.

- (b) A conditional license may be issued:
 - (1) When an applicant or licensee has not met all requirements for the issuance or renewal of a license but the board determines it to be in the best interest of the public to issue or renew the license on a conditional basis;
 - (2) When an applicant or licensee has committed any act which may be grounds for the revocation, suspension, or refusal to renew a license under chapter 444, HRS; but the board has determined it to be in the best interest of the public to have the applicant or licensee obtain or retain the license on a conditional basis; or
 - (3) Under other circumstances in which the board determines it to be in the best interest of the public that a person be issued a conditional license.
- (c) A conditional license shall be subject to the same requirements and license fees as an unconditional license and shall be renewable. Converting a conditional license to an unconditional license shall be by action of the board upon request by the licensee and there shall be no additional fees for this conversion. A conditional license shall remain in that status for at least one year. [Eff 8/14/80; am and ren §16-77-24, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp _____] (Auth: HRS §444-4) (Imp: HRS §§444-4, 444-9, 444-11, 444-11.1, 444-12, 444-13)

SUBCHAPTER 5

CLASSIFICATION

§16-77-28 All contractors classified. (a) All persons licensed under chapter 444, HRS, shall be classified by the board into one or more classifications or subclassifications, or both, as follows:

General engineering contractor	"A"
General building contractor	"B"
Specialty contractor	"C"

(b) The definitions of these classifications shall be as provided in section 444-7, HRS.

(c) Exhibit A, entitled Specialty Contractor Classifications, dated May 23, 2003, located at the end of this chapter, is hereby incorporated into and made a part of this chapter.

(d) Classifications under C-68 classified specialist may be established by the board until the work performed is defined and a hearing is held to establish the

proper classification. A C-68 classified specialist shall be subject to the same requirements as other contractor classifications.

(e) The board, after a hearing, may establish or modify or delete existing classifications, based on established usage in the construction industry. [Eff 8/14/80; am and ren §16-77-28, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; am and comp 4/15/04; comp] (Auth: HRS §§444-4, 444-7, 444-8) (Imp: HRS §§444-7, 444-8, 444-9, 444-10, 444-11, 444-13)

SUBCHAPTER 6

SCOPE OF CLASSIFICATIONS

§16-77-32 General engineering, general building, and specialty contractors.

(a) Licensees who hold the "A" general engineering contractor classification shall automatically hold the following specialty classifications without further examination or paying additional fees:

- (1) C-3 asphalt paving and surfacing;
- (2) C-9 cesspool;
- (3) C-10 scaffolding;
- (4) C-17 excavating, grading, and trenching;
- (5) C-24 building moving and wrecking;
- (6) C-31a cement concrete;
- (7) C-32 ornamental guardrail, and fencing;
- (8) C-35 pile driving, pile and caisson drilling, and foundation;
- (9) C-37a sewer and drain line;
- (10) C-37b irrigation and lawn sprinkler systems;
- (11) C-38 post tensioning;
- (12) C-43 sewer, sewage disposal, drain, and pipe laying;
- (13) C-49 swimming pool;
- (14) C-56 welding;
- (15) C-57a pumps installation;
- (16) C-57b injection well;
- (17) C-61 solar energy systems.

(b) The "A" general engineering contractor may also install poles in all new pole lines and replace poles, provided that the installation of the ground wires, insulators, and conductors is performed by a contractor holding the C-62 pole and line classification. The "A" general engineering contractor may also install duct lines, provided that the installation of conductors is performed by a contractor holding the C-13 electrical classification.

(c) Licensees who hold the "B" general building contractor classification shall automatically hold the following specialty classifications without further examination or paying additional fees:

- (1) C-5 cabinet, millwork, and carpentry remodeling and repairs;
- (2) C-6 carpentry framing;
- (3) C-10 scaffolding;
- (4) C-12 drywall;
- (5) C-24 building moving and wrecking;
- (6) C-25 institutional and commercial equipment;
- (7) C-31a cement concrete;
- (8) C-32a wood and vinyl fencing;
- (9) C-42a aluminum and other metal shingles;
- (10) C-42b wood shingles and wood shakes.

(d) Licensees who hold a specialty contractors license shall automatically hold the subclassifications of the licensee's particular specialty without examination or paying additional fees. [Eff 8/14/80; am and ren §16-77-32, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-8) (Imp: HRS §§444-7, 444-8, 444-9, 444-10)

§16-77-33 Limitation of classifications. (a) A licensee classified as an "A" general engineering contractor or as a "B" general building contractor shall not act, assume to act, or advertise as a specialty contractor except in the specialty classifications which the licensee holds.

(b) A general building contractor license does not entitle the holder to undertake a contract unless it requires more than two unrelated building trades or crafts or unless the general building contractor holds the specialty license to undertake the contract. Work performed which is incidental and supplemental to one contractor classification shall not be considered as unrelated trades or crafts.

(c) A licensee classified as a specialty contractor shall not act, assume to act, or advertise as a contractor in any classification other than those which the licensee holds.

(d) Any licensee who acts, assumes to act, or advertises in any classification other than for which the licensee is duly licensed under this chapter shall be construed to be engaged in unlicensed activity. [Eff 8/14/80; am and ren §16-77-33, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-8) (Imp: HRS §§444-7, 444-8, 444-9, 444-9.2, 444-10)

§16-77-34 Work incidental and supplemental. (a) "Incidental and supplemental" is defined as work in other trades that is subordinate to, directly related to, and necessary for the completion of the [project undertaken by a licensee pursuant to] work of greater importance that is within the scope of the licensee's license (i.e., the primary work the specialty contractor is licensed to perform).

(b) In addition to subsection (a), to qualify as incidental and supplemental work, that work must also represent less than a majority of the project (as measured in relation to the project's total cost or extent of work).

(c) For purposes of this section, "majority" means any amount greater than fifty per cent. [Eff 8/14/80; am and ren §16-77-34, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; am and comp] (Auth: HRS §§444-4, 444-7) (Imp: HRS §§444-7, 444-8, 444-9)

§16-77-35 Additional classifications. (a) A licensee may obtain additional classifications by filing an application, paying the appropriate fees, meeting the requirements regarding experience in the classification requested, and passing the appropriate part II examination.

(b) A licensee holding a specialty contractor's license who is applying for an "A" general engineering or "B" general building contractor's license may be required to submit a current financial statement and other supporting documents. [Eff 8/14/80; am and ren §16-77-35, 6/22/81; am and comp 11/7/83; comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-7) (Imp: HRS §§444-7, 444-8, 444-9, 444-15)

SUBCHAPTER 7

EXAMINATIONS

§16-77-39 Examination - part I. All applicants for a contractor's license shall be required to take and successfully pass a written examination designed to test the applicant's general knowledge of the building, safety, health, labor, and lien laws of the State and of the basic administrative principles of the contracting business. [Eff 8/14/80; am and ren §16-77-39, 6/22/81; am and comp 11/7/83; comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-10, 444-11)

§16-77-40 Examination - part II. All applicants for a contractor's license shall be required to take and successfully pass a written examination designed to test the applicant's specialized knowledge in the particular classification in which the applicant desires to be licensed. [Eff 8/14/80; am and ren §16-77-40, 6/22/81; am and comp 11/7/83; comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-10, 444-11)

§16-77-41 Examination not required. An examination shall not be required when the applicant has previously qualified by written examination within a period of four years prior to application, or within four years from the date the applicant was last licensed in good standing or in an inactive status, provided the applicant applies for a license in the same classification in which the applicant previously qualified by examination. [Eff 8/14/80; am and ren §16-77-41, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-10, 444-11)

§16-77-42 Use of interpreters. (a) In exceptional cases with the express approval of the board, an applicant may use an interpreter to read and translate the examination questions to the applicant in the examination room.

(b) An interpreter shall be prohibited from answering, in any way, the questions for the applicant. Any violation of this subsection shall constitute examination misconduct and the applicant shall be subject to penalties provided in section 16-77-46. The applicant shall be responsible for obtaining an interpreter, who shall not currently be or have been in the construction business, and shall pay a fee in addition to the examination fee. The board may evaluate the person's qualifications to be an interpreter and may restrict the number of times a person can be an interpreter in a twelve-month period. [Eff 8/14/80; am and ren §16-77-42, 6/22/81; comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-10, 444-11)

§16-77-43 Notice of examination. All applicants whose applications have been approved shall be given an application for examination and shall apply to the testing agency for examination. The board shall send notice to the applicant's last known address on file with the board. Examinations are given monthly. Unless applicants are otherwise notified, examinations shall be taken at the regularly scheduled time. [Eff 8/14/80; am and ren §16-77-43, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-10, 444-11)

§16-77-44 Passing grade. A grade of seventy-five per cent shall be a minimum passing grade for each part of any examination. [Eff 8/14/80; am and ren §16-77-44, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-10, 444-11)

§16-77-45 Failure to pass examination. Applicants failing to obtain a passing grade on the first examination may schedule a second examination and shall pay the appropriate fees. Applicants who fail to pass the examination within six months shall file a new application and application fee. [Eff 8/14/80; am and ren §16-77-45, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §444-4)

§16-77-46 Examination misconduct. (a) Any misconduct by an applicant during an examination shall be prohibited and subject to action by the board. Acts of misconduct during an examination include, but are not limited to, any of the following:

- (1) Failure to follow examination instructions or procedures;
- (2) Unauthorized communication between candidates or with others inside or outside of the examination room;
- (3) Copying another candidate's answers or allowing one's answers to be copied;
- (4) Allowing another person to sit in the examination room and take the examination for the applicant;
- (5) Reference to crib sheets, outlines, textbooks, or other unauthorized materials inside or outside the examination room;
- (6) Leaving the examination room without prior approval; or
- (7) Removal of any examination booklet, answer booklet, answer sheet, or workpapers from the examination room without permission.

(b) Action by the board may include invalidating the entire examination and suspending an applicant from taking the examination again for a period of up to three years. Prior to imposing any action under this subsection, the applicant shall be afforded an opportunity to appear before the board. [Eff and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§436B-7, 444-4) (Imp: HRS §§436B-7, 444-4, 444-11)

SUBCHAPTER 8

RENEWAL OF LICENSES

§16-77-49 Notice of renewal. Before August 15 of each even-numbered year the board shall mail to every licensee, except those whose license has been revoked, forfeited, terminated, withdrawn, or under suspension, a notice of renewal application to the last known address of the licensee on file with the board. [Eff 8/14/80; am and ren §16-77-49, 6/22/81; comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §444-15)

§16-77-50 Date for filing. All licensees shall complete and submit a renewal application as provided by the board together with all documents required under section 16-77-55 and pay the required fees, including the recovery and education fund fees, on or before September 30 of each even-numbered year. Failure, neglect, or refusal of any licensee to pay the fees and submit all required documents by September 30 of each even-numbered year shall result in the automatic forfeiture of the licensee's license without a hearing. The license shall be forfeited as of October 1 of the even-numbered year. [Eff 8/14/80; am and ren §16-77-50, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04 comp] (Auth: HRS §444-4) (Imp: HRS §§444-11.1, 444-13, 444-15)

§16-77-51 Restoration of forfeited license. Forfeited licenses may be restored by filing a renewal application along with all required documents, and paying the renewal fees, including the recovery and education fund fees, plus a penalty fee on or before November 30 of the renewal year. Licensees who fail to restore their licenses by November 30 shall be required to apply as new applicants, and shall file a new license application form along with all required supporting documents and fees. [Eff 8/14/80; am and ren §16-77-51, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §444-15)

§16-77-52 Board may refuse to renew. The board may refuse to renew or restore a license for failure or refusal of the licensee:

- (1) To properly complete the renewal application form and submit all documents required under section 16-77-55 and all fees required under section 16-77-54;
- (2) To comply with the rules of the board or section 444-17, HRS; or
- (3) To meet any of the qualifications under section 444-11, HRS, or this chapter. [Eff 8/14/80; am and ren §16-77-52, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp _____] (Auth: HRS §444-4) (Imp: HRS §§444-4, 444-11, 444-11.1, 444-15, 444-17)

§16-77-53 Proper filing authorizes contractor to operate. The proper filing of a renewal application by September 30 of the even-numbered year authorizes operation as a contractor by the licensee until the actual issuance of the renewal license for the ensuing license period. The date upon which a renewal application is filed shall be determined:

- (1) If sent by mail, by the date of the United States Postal Service postmark appearing upon the envelope containing the application; or
- (2) If personally delivered, by the time stamp marked immediately upon receipt thereof. [Eff 8/14/80; am and ren §16-77-53, 6/22/81; am and comp 11/7/83; comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp _____] (Auth: HRS §444-4) (Imp: HRS §§444-13, 444-15)

§16-77-54 Renewal fees. (a) Prior to September 30 of each even-numbered year, all licensees shall submit the appropriate renewal fees provided in chapter 16-53 and the following:

- (1) A contractors education fund fee of five dollars; and
 - (2) A contractors recovery fund fee of ten dollars.
- (b) These fees shall be payable to the "Department of Commerce and Consumer Affairs". [Eff 8/14/80; am and ren §16-77-54, 6/22/81; comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp _____] (Auth: HRS §§26-9, 444-4, 444-15) (Imp: HRS §§26-9, 444-15)

§16-77-55 Conditions for renewal of license. (a) No license shall be renewed until the licensee continues to meet the requirements of sections 444-11, 444-11.1, and 444-17, HRS, and of this chapter including, but not limited to, proof of financial integrity.

- (b) To establish financial integrity, the licensee shall submit:
 - (1) A current state tax clearance or proof of payment arrangement, and a statement disclosing or denying the existence of any liens, undisputed debts or judgments against the licensee relating to services or materials rendered in connection with operations as a contractor; and
 - (2) Proof that the licensee has continuously maintained workers' compensation insurance, is authorized to act as a self-insurer under chapter 386, HRS, or is excluded from the requirements of chapter 386, HRS;
 - (3) Proof that liability and property damage insurance has been maintained in the following amounts:

Bodily injury	\$100,000 each person \$300,000 each occurrence
Property damage	\$ 50,000 each occurrence; and
 - (4) Proof that any surety bond imposed by the board is current.

(c) The board may, at the time of renewal, consider any material submitted to it concerning a licensee's financial integrity and shall give the licensee an opportunity to respond before the board to any allegations made concerning the licensee's financial integrity.

(d) The board may refer any allegations concerning a licensee's lack of financial integrity for a hearing conducted pursuant to chapter 91, HRS. [Eff 8/14/80; am and ren §16-77-55, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-11, 444-11.1, 444-15, 444-17)

§16-77-56 Inactive status. (a) An inactive licensee may reactivate the license by submitting an application, application fee, current financial statement, tax clearance, and credit report to the board. An inactive licensee may reactivate the license as an RME by submitting an application, application fee, and a current credit report.

(b) The board shall review the request and supporting documents as if the request was a new application for a license. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-11, 444-11.1, 444-12, 444-15)

SUBCHAPTER 9

§16-77-59 Repealed. [R 4/14/88]

SUBCHAPTER 10

SUSPENSION, REVOCATION, DISSOCIATION, DISSOLUTION

§16-77-63 Alternatives in lieu of revocation or suspension. (a) Failure of any licensee, including RMEs, to comply with any provision of chapter 444, HRS, or this chapter shall be grounds for suspension, revocation, or refusal to renew the license. The board may, in its discretion and in lieu of suspension, revocation, or non-renewal of license, impose a bond, fine, or other condition acceptable to all interested parties.

(b) To reinstate a license which was under suspension, the licensee may, in addition to meeting any conditions imposed for reinstatement, be required to show proof of workers' compensation, liability, and property damage insurance, submit a current financial statement, credit report, tax clearance, and as added proof of financial integrity, a bond in an amount to be determined by the board. [Eff 8/14/80; am and ren §16-77-63, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-11, 444-16.5, 444-17)

§16-77-64 Notice due board on death, dissociation, or disability of RME; forfeiture of license. (a) A contracting entity who qualified for licensure by employment of an RME shall within sixty days after the death, dissociation, or disability of the RME, notify the board of the death, dissociation, or disability of the RME. The contracting entity shall submit an application to qualify a new RME or place its license on inactive status within ninety days of the death, dissociation, or disability of the RME. The contracting entity may continue to operate until the board makes a final determination upon its timely application to qualify a new RME; provided that the entity may not bid upon or enter into new contracts until the board's determination is made.

(b) "Disability" includes any situation in which the direct management of the licensed contracting entity's business is no longer under the control of the principal RME or when a subordinate RME is unable to be responsible for all construction activities relating to the license classifications held by the subordinate RME.

(c) Failure of the contracting entity to notify the board of the death, dissociation, or disability of the RME within the sixty-day period shall result in the license being automatically forfeited without a hearing. The license may be restored when the contracting entity employs another licensed individual as the contracting entity's RME and the entity files a new application with the board.

(d) Failure of the contracting entity to submit an application for a new principal RME within ninety days of the death, dissociation, or disability, and to qualify a new principal RME within the time period allowed by the board shall result in the automatic forfeiture of the contracting entity's license without a hearing.

(e) Contracting entities shall not bid or enter into contracts without having a principal RME in its employ who has direct management of the contracting business.

(f) An RME who dissociates from the contracting entity shall notify the board within sixty days of the dissociation. The RME shall, within ninety days of the dissociation:

- (1) Apply to become a contracting entity by submitting a current financial statement, fees, tax clearance or proof of payment arrangement, credit report, and required insurance;
- (2) Obtain employment with another contracting entity which shall submit a proper application thereof; or
- (3) Place the license on an inactive status.

(g) Failure of the RME to complete one of the three actions in subsection (f) within ninety days of the dissociation shall cause the automatic forfeiture of the license without a hearing. [Eff 8/14/80; am and ren §16-77-64, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; am and comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-4, 444-11, 444-11.1, 444-12, 444-15, 444-16, 444-21)

§16-77-65 Board jurisdiction to proceed. The lapsing, forfeiture, termination, or suspension of a license by operation of law, or by order or decision by the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license. [Eff 8/14/80; am and ren §16-77-65, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: §§436B-22, 444-35)

SUBCHAPTER 11

OWNERSHIP AND MANAGEMENT OF LICENSE

§16-77-69 License issued. A contracting entity shall have a contractor's license prior to engaging in contracting. A contractor's license shall only be issued to a contracting entity if:

- (1) The contracting business is under the direct management of an individual who holds an appropriate and current license and who is the principal RME thereof; and
- (2) The contracting entity has met the financial integrity and capacity requirements to engage in the contracting business provided in this chapter and chapter 444, HRS. [Eff 8/14/80; am and ren §16-77-69, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: §444-4) (Imp: HRS §§444-1, 444-11, 444-12)

§16-77-70 Direct management of the contracting business. (a) "Direct management of the contracting business" as used in chapter 444, HRS, and this chapter means the general supervision of the construction projects undertaken by the contracting entity, the control of technical and administrative decisions, personnel management, the review of construction contracts, and enforcing compliance with all laws and rules affecting the contracting business.

(b) The contracting business of a contracting entity shall be under the direct management of a principal RME. [Eff 8/14/80; am and ren §16-77-70, 6/22/81; am and comp 11/7/83; comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §444-4)

§16-77-71 Principal and subordinate RMEs. (a) Contracting entities may have in their employ more than one RME, but shall designate in every case a principal RME who shall be primarily responsible for the direct management of the business of the contracting entity and who shall be:

- (1) In a position to secure full compliance with the laws governing contractors, including but not limited to chapter 444, HRS, and this chapter;
- (2) Familiar with all contracts the contracting entity enters into, sees that all contract provisions are carried out, and signs or initials all contracts;

- (3) Familiar with all projects the contracting entity undertakes and sees that records are kept on the projects, which shall include the amount of time the principal RME spends with the contracting entity and payroll records of the principal RME;
- (4) In residence in the State during the time the license of the contracting entity is in effect or during the period a project is under construction; and
- (5) Held responsible for any violation of this chapter or chapter 444, HRS.

(b) Other RMEs employed but not designated by the contracting entity as the principal RME shall be referred to as subordinate RMEs and shall be responsible for all activities relating to the classifications held by the subordinate RME.

(c) An RME shall not be considered a contracting entity and shall be considered to be engaging in unlicensed activity if the RME enters into a contract other than for the contracting entity by whom the RME is employed. [Eff 8/14/80; am and ren §16-77-71, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp _____] (Auth: HRS §444-4) (Imp: HRS §§444-4, 444-9, 444-11, 444-15, 444-17, 444-21)

§16-77-72 RME for more than one contracting entity. An individual may be an RME for more than one contracting entity if:

- (1) There is a common ownership of at least fifty-one per cent of the equity of each contracting entity for which the individual acts as the RME;
- (2) A contracting entity is a subsidiary of or joint venture with another contracting entity;
- (3) There is a direct family relationship between the RME and the officers, directors, members, managers, or partners of the other contracting entities for which the individual acts as the RME; or
- (4) There is a direct family relationship between the officers, directors, members, managers, and partners of all contracting entities for which the individual acts as the RME; and
- (5) The board is satisfied that it is in the public's interest and that the individual is competent, able, and qualified to be an RME for more than one contracting entity. [Eff 8/14/80; am and ren §16-77-72, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp _____] (Auth: HRS §444-4) (Imp: HRS §§444-4, 444-9, 444-11)

§16-77-73 License nontransferable. Any license issued under chapter 444, HRS, or this chapter shall be nontransferable. [Eff 8/14/80; am and ren §16-77-73, 6/22/81; am and comp 11/7/83; comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: §§444-4, 444-9)

§16-77-74 Repealed. [R 4/15/04]

§16-77-75 Revocation, suspension, termination, withdrawal, forfeiture, and refusal to renew license of RME; fines. (a) The license of an RME may be suspended, revoked, terminated, withdrawn, forfeited, or refused to be renewed if the license of the contracting entity for which the person is the RME is revoked, terminated, withdrawn, forfeited, suspended, or refused renewal pursuant to chapter 444, HRS, and this chapter. An RME may be fined if the contracting entity for which the person is the RME is fined for violating the provisions of chapter 444, HRS, and this chapter.

(b) The license of the principal RME shall be automatically terminated upon issuance of a court order authorizing payment from the contractors recovery fund. The license of the subordinate RME who holds the classification within which arose the activities leading to a court order authorizing payment from the contractors recovery fund shall be automatically terminated upon issuance of a court order authorizing payment from the contractors recovery fund. [Eff 8/14/80; am and ren §16-77-75, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 2/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-17) (Imp: §§444-4, 444-17, 444-28)

§16-77-76 Maintenance of bond. (a) All licensees shall be required to maintain any surety bond imposed by the board for at least one year before requesting a waiver of the surety bond.

(b) The board may, in its discretion, waive the surety bond if a licensee demonstrates that it has financial integrity. The board may require a licensee to submit current credit reports, current financial statements, a current state tax clearance or proof of payment arrangement, and other documents to show evidence of financial integrity. [Eff and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-11.1, 444-16.5)

SUBCHAPTER 12

DISCLOSURE TO OWNERS; CONTRACTS

§16-77-79 Disclosure to homeowners. (a) Contractors engaging in home construction or home improvements shall, prior to obtaining a binding contract from the homeowner and prior to applying for a building permit:

- (1) Disclose all information pertaining to the contract and its performance, the absence of which might mislead the homeowner to the homeowner's detriment including but not limited to the lien rights of labor, suppliers, and subcontractors;
 - (2) Disclose the scope of work to be performed;
 - (3) Disclose the approximate percentage of work to be subcontracted;
 - (4) Disclose whether the contractor is bonded or not and whether the owner has a right to demand bonding on the work to be performed; provided that if the contractor is not bonded, the contractor shall disclose the extent of the financial security available to assure performance of the contract;
 - (5) Disclose the contractor's license number and contractor classification(s);
 - (6) Disclose all warranties, if any; and
 - (7) Provide an estimate of the cost of work to be performed.
- (b) For purposes of this chapter, "homeowner" means the owner or lessees of residential real property, including without limitation owners or lessees of private residences, condominiums, or cooperative units. [Eff 8/14/80; am and ren §16-77-79, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-25.5) (Imp: HRS §444-25.5)

§16-77-80 Homeowner contracts. (a) All contractors shall provide homeowners with a written contract involving home construction or improvements which shall provide the following:

- (1) The name, address, license number, and classification(s) of the contractor;
- (2) The exact dollar amount due from the homeowner under the contract;
- (3) The date work is to commence and number of days for completion;
- (4) The scope of the work to be performed and materials to be used;
- (5) The approximate percentage of work to be subcontracted and the names and license numbers of all subcontractors, if any;

- (6) A clear statement of the risk of loss of any payments made to a sales representative (printed in distinct capital letters next to the owner's signature line);
 - (7) A provision explaining the lien rights of all parties performing under the contract including the contractor, any subcontractor, or any materialman supplying commodities or labor on the project;
 - (8) The terms of any warranty offered; and
 - (9) The signatures of the homeowner and the contractor.
- (b) The contract shall be executed prior to the performance of any home construction or improvement.
- (c) For purposes of section 444-25.5, HRS, and this section, "home construction or improvements" shall not include service-type work (e.g., maintenance work performed by electrical and plumbing contractors) that does not require a permit by a county or other local subdivision of the State. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp _____] (Auth: §§444-4, 444-25.5) (Imp: HRS §444-25.5)

SUBCHAPTER 13

ADVERTISING PRACTICES

§16-77-83 Advertising through the media. A contracting entity advertising through any media shall be identified as a licensed contractor by listing the name under which the licensee is licensed or the licensee's trade name which has been filed with the board, and the licensee's license number. For the purpose of this section, "media" includes, but is not limited to, newspapers, magazines, radio, television, the Internet, and directories, including all listings in the yellow pages. [Eff 8/14/80; am and ren §16-77-83, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp _____] (Auth: §§444-4, 444-9.2) (Imp: HRS §444-9.2)

SUBCHAPTER 14

PLACE OF BUSINESS

§16-77-87 All licensees to have place of business. No license shall be issued or renewed to any contracting entity, except RMEs, who does not maintain a permanent place of business within the State where the contracting entity may be served notice and legal process, and where the contracting entity's license is

prominently displayed. For purposes of this section, "permanent place of business" means a physical address, not a post office box number. [Eff 8/14/80; am and ren §16-77-87, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-14) (Imp: HRS §444-14)

§16-77-88 Change of address. A licensee shall notify the board of any change of address within ten business days of the change. All notices required to be sent by the board under this chapter or chapter 444, HRS, shall be sent to the last known address on file with the board. [Eff 8/14/80; am and ren §16-77-88, 6/22/81; am and comp 11/7/83; comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §444-14)

§16-77-89 Place of business for out-of-state licensees. (a) For out-of-state licensees, this section shall apply as to a place of business in the State.

(b) Attorney's offices or other similar offices in the State may be listed as the place of business for out-of-state licensees; provided that an individual (or individuals) within the office is or acts as an agent or representative of the licensee who:

- (1) Can be served with notice and legal process;
- (2) Will receive all inquiries and other correspondence on behalf of the licensee; and
- (3) Will be responsible to see that the inquiries and other correspondence are expeditiously taken care of.

If an attorney's office or other similar office in the State is listed as the place of business for an out-of-state licensee, information regarding the name of the agent or representative, and a telephone number where the agent or representative can be contacted shall be provided to the board and made available to the public.

(c) Out-of-state addresses may be listed as the place of business for out-of-state licensees; provided that the contractor's license of the licensee is on inactive status. Inactive status is provided for in section 444-15, HRS.

(d) Post office box numbers shall not be listed as the place of business for out-of-state licensees.

(e) The contractor's license shall be prominently displayed in the out-of-state licensee's place of business in this State. [Eff 8/14/80; am and ren §16-77-89, 6/22/81; am and comp 11/7/83; am and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-14) (Imp: HRS §444-14)

SUBCHAPTER 15

§16-77-93 Repealed. [R 4/14/88]

SUBCHAPTER 16

RESPONSIBILITY FOR GOOD WORKMANSHIP

§16-77-97 Performance. Licensees shall perform all work in a workmanlike manner. Workmanship shall conform to trade standards. [Eff 8/14/80; am and ren §16-77-97, 6/22/81; comp 11/7/83; comp 4/14/88; comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §444-4)

SUBCHAPTER 17

RECOVERY AND EDUCATION FUNDS

§16-77-100 Recovery fund assessments. (a) If a contractor fails to pay the contractors recovery fund fee provided in section 444-27, HRS, within sixty days from the date of the assessment, the contractor's license shall be automatically forfeited without a hearing.

(b) A license forfeited under subsection (a) may be restored upon submittal of the assessed contractors recovery fund fee plus a penalty fee of ten dollars within thirty days of forfeiture. Failure to submit these fees within this time period shall require the contractor to apply as a new applicant. The contractor shall be required to pay these fees, in addition to meeting the other requirements contained in this chapter and chapter 444, HRS, as a condition of relicensure. [Eff and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-27) (Imp: HRS §444-27)

§16-77-101 Use of education fund fees. (a) The board may authorize the use of the funds deposited in the contractors education fund for the consuming public, licensees, board members, and staff.

(b) The education funds may be used for publications, media exposure, seminars, participation in national associations, classes, and any other educational purposes the board deems necessary.

(c) The board may also use these funds to improve the services of the board's staff to the consuming public and licensees. [Eff and comp 11/7/83; comp

4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth:
HRS §§444-4, 444-29) (Imp: HRS §444-29)

SUBCHAPTER 18

ADMINISTRATIVE PROCEDURES

§16-77-105 Administrative practice and procedure. The rules of practice and procedure of the department, chapter 16-201, are incorporated by reference herein and made a part of this chapter. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§91-2, 91-3, 91-8, 91-9, 444-4) (Imp: HRS §§91-2, 91-9)

§16-77-106 Oral testimony. (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the board not later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is currently the subject of a proceeding which is subject to the hearings relief, declaratory relief, or rule relief provisions of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §92-3)

§16-77-107 Referral for hearing. The board may refer any disputed matter to a hearing pursuant to chapter 91, HRS, including but not limited to allegations concerning the experience or financial integrity of an applicant or a licensee. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §444-4) (Imp: HRS §§444-11, 444-11.1, 444-16)

SUBCHAPTER 19

ASBESTOS CONTRACTORS

§16-77-111 Definitions. As used in this subchapter or in chapter 444, HRS: "Asbestos-containing material" means any material that contains more than one per cent asbestos.

"Asbestos project" means any activity involving the demolition, renovation, or encapsulation of friable asbestos materials.

"Demolition" means the wrecking or taking of any load-supporting structural member related to or containing friable asbestos materials, and any related removing or stripping of friable asbestos materials.

"Encapsulate" means to coat, bind, or resurface walls, ceilings, pipes, or other structures to prevent friable asbestos from becoming airborne.

"Friable asbestos" means any asbestos-containing material that can be crumbled, pulverized, or reduced to powder, when dry, by hand pressure and includes previously non-friable material after such previously non-friable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Renovation" means the removal or stripping of friable asbestos materials used on any pipe, duct, boiler, tank, reactor, turbine, furnace, or structural member. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-7.5) (Imp: HRS §444-7.5)

§16-77-112 License required. (a) Any person or contracting entity who engages in any activity involving the application, enclosure, removal, encapsulation,

renovation, repair, demolition, or other disturbances of friable asbestos or asbestos-containing material that may become friable during the activity shall be licensed as an asbestos contractor by the board under chapter 444, HRS, and this chapter.

(b) Contractors holding licenses which include maintenance, repair, or removal of asbestos pipe or sheets, vinyl asbestos floor materials, or asbestos bituminous or resinous materials in their scope of activity of the license are exempt from obtaining a separate asbestos classification provided the activity is performed in a manner that no health hazard is posed to the public, the contractor, or the contractor's employees. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-7.5) (Imp: HRS §§444-7, 444-7.5, 444-9, 444-11)

§16-77-113 Requirements for license. (a) Applicants for an asbestos contractor's license shall meet all licensing requirements as required for other specialty contractors with the exception of the experience requirements under section 16-77-18. In lieu of these experience requirements, applicants shall meet the asbestos training requirements under section 16-77-114.

(b) Applicants shall submit proof of training obtained pursuant to this subchapter by the applicant, the RME, and all asbestos abatement workers or employees hired by the applicant. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-7.5) (Imp: HRS §§444-7, 444-7.5, 444-8, 444-9, 444-11)

§16-77-114 Training requirements. (a) Applicants shall submit proof of the successful completion by the applicant or the applicant's RME, as the case may be, of a four-day Environmental Protection Agency (EPA) or board approved asbestos training course taken within two years prior to the filing of the application for license. The training shall include lectures, demonstrations, six hours of hands-on training, individual respirator fit testing, course review, and a written examination. The written examination shall consist of one hundred multiple choice questions and the passing score shall be seventy per cent. The following topics shall be adequately addressed in the training:

- (1) The physical characteristics of asbestos, and asbestos-containing materials, including identification of asbestos, aerodynamic characteristics, typical uses, and physical appearance; a review of hazard assessment considerations; and a summary of abatement control options;
- (2) Potential health effects related to asbestos exposure, including the nature of asbestos-related diseases; routes of exposure; dose-response

relationships and the lack of a safe exposure level; synergism between cigarette smoking and asbestos exposure; and latency period for disease;

- (3) Employee personal protective equipment, including classes and characteristics of respirator types; limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures; methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors; factors that alter respirator fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of a personal protective clothing; use, storage, and handling of non-disposable clothing; and regulations covering personal protective equipment;
- (4) State-of-the-art work practices, including proper work practices for asbestos abatement activities including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lockout; proper working techniques for minimizing fiber release; use of wet methods; use of negative pressure ventilation equipment; use of high efficiency particulate air (HEPA) vacuums; proper clean-up and disposal procedures; work practices for removal, encapsulation, enclosure, and repair; emergency procedures for sudden releases; potential exposure situations; transport and disposal procedures, and recommended and prohibited work practices; and any new abatement-related techniques and methodologies;
- (5) Personal hygiene, including entry and exit procedures for the work area; use of showers; and avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area; and other potential exposures, such as family exposure;
- (6) Additional safety hazards, including hazards encountered during abatement activities and how to deal with them, such as electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips, and falls, and confined spaces;
- (7) Medical monitoring, including Occupational Safety and Health Administration (OSHA) requirements for a pulmonary function test, chest X-rays, and a medical history for each employee;
- (8) Air monitoring, including procedures to determine airborne concentrations of asbestos fibers that will provide a description of

aggressive sampling, sampling equipment and methods; reasons for air monitoring, types of samples, and interpretation of results, specifically from analysis performed by polarized light, phase-contrast, and electron microscopy analyses;

- (9) Relevant federal, state, and local regulatory requirements including:
 - (A) Requirements of the Toxic Substances Control Act Title II, Asbestos Hazard Emergency Response (P.L. 99-519, 100 Stat. 2970, et seq., 15 U.S.C. §2641 et seq.);
 - (B) National Emission Standards for Hazardous Air Pollutants, (40 CFR Part 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos));
 - (C) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR §1910.134);
 - (D) OSHA Asbestos Construction Standard (29 CFR §1926.1101); and
 - (E) EPA Worker Protection Rule (40 CFR Part 763, Subpart G (Asbestos Abatement Projects));
- (10) Respiratory protection programs and medical surveillance programs;
- (11) Insurance and liability issues, including contractor issues; workers' compensation coverage and exclusions; third-party liabilities and defenses; insurance coverage and exclusions;
- (12) Recordkeeping for asbestos abatement projects, including records required by federal, state, and local regulations; and records recommended for legal and insurance purposes;
- (13) Supervisory techniques for asbestos abatement activities, including supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices;
- (14) Contract specifications, involving key elements that are included in contract specifications; and
- (15) Course review of key aspects of the training course.

(b) Applicants shall submit proof of the successful completion by the applicant's asbestos abatement workers or employees of a three-day EPA or board approved asbestos training course taken within two years prior to the filing of the application for license. The training shall include lectures, demonstrations, six hours of hands-on training, individual respirator fit testing, course review, and a written examination. The written examination shall consist of fifty multiple choice questions and the passing score shall be seventy per cent. The following topics shall be adequately addressed in the training:

- (1) Physical characteristics of asbestos, including identification of asbestos, aerodynamic characteristics, typical uses, and physical appearance, and a summary of abatement control options;
- (2) Potential health effects related to asbestos exposure, including the nature of asbestos-related diseases, routes of exposure, dose-response relationships and the lack of a safe exposure level, synergism between cigarette smoking and asbestos exposure, and latency period for disease;
- (3) Employee personal protective equipment, including classes and characteristics of respirator types; limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures; methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors; factors that alter respirator fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposal clothing; and regulations covering personal protective equipment;
- (4) State-of-the-art work practices, including proper asbestos abatement activities which describe proper construction and maintenance of barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lockout; proper working techniques for minimizing fiber release; use of wet methods; use of negative pressure ventilation equipment; use of high efficiency particulate air (HEPA) vacuums; proper clean-up and disposal procedures; work practices for removal, encapsulation, enclosure, and repair; emergency procedures for sudden releases, potential exposure situations; transport and disposal procedures; and recommended and prohibited work practices;
- (5) Personal hygiene, including entry and exit procedures for the work area; use of showers; avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area; and potential exposures, such as family exposure;
- (6) Additional safety hazards, including hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire, and explosion hazards, scaffold and ladder hazards, slips, trips, and falls, and confined spaces;
- (7) Medical monitoring, including OSHA requirements for a pulmonary function test, chest X-rays and a medical history for each employee;

- (8) Air monitoring, including procedures to determine airborne concentrations of asbestos fibers, focusing on how personal air sampling is performed and the reasons for it;
 - (9) Relevant federal, state, and local regulatory requirements, procedures, and standards, including relevant EPA, OSHA, and state regulations concerning asbestos abatement workers;
 - (10) Establishment of respiratory protection programs; and
 - (11) Course review of key aspects of the training course.
- (c) One day of training shall equal eight hours, including breaks and lunch. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-7.5) (Imp: HRS §§444-7, 444-7.5, 444-8, 444-9, 444-11)

§16-77-115 Examination. Applicants shall take and successfully pass Part I of the board's examination as described in subchapter 7 and shall submit proof of passing the EPA or board approved training course examination by a score of seventy per cent. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-7.5) (Imp: HRS §§444-7, 444-7.5, 444-8, 444-9, 444-11)

§16-77-116 Conditions for renewal of license; refresher training courses.

(a) In addition to meeting all other requirements for renewal pursuant to subchapter 8, asbestos contractors shall submit proof of completion by the individual, RME, and asbestos abatement workers or employees of a sixteen-hour EPA or board approved asbestos refresher training course for the previous biennium; or eight hours of training if the individual, RME, and asbestos abatement workers or employees were licensed in the second year of the biennium.

(b) The refresher training course shall review and discuss changes in federal and state regulating developments in state-of-the-art procedures and a review of key aspects of the initial training course. [Eff and comp 4/14/88; am and comp 12/9/02; comp 4/15/04; comp] (Auth: HRS §§444-4, 444-7.5, 444-15) (Imp: HRS §§444-7, 444-7.5, 444-8, 444-9, 444-11, 444-15)

§16-77-117 Revocation, suspension, and renewal of license. The board may revoke, suspend, or refuse to renew any asbestos specialty contractor's license for any of the causes provided in section 444-17, HRS, or for any of the following causes:

- (1) Failing to meet any Hawaii and federal OSHA or EPA health, safety or environmental requirements or standards;
- (2) Deviating from any Hawaii and federal OSHA or EPA asbestos procedures;
- (3) Allowing any individual, asbestos abatement worker or employee who has not received the required asbestos training to work on any asbestos project;
- (4) Failing to have present at the work site at all times while the work is in progress, the RME or supervisor who has received the required asbestos training;
- (5) Failing to provide an asbestos abatement worker or employee access to the asbestos-trained RME or supervisor at the work site throughout the duration of the project;
- (6) Refusing entry to the work site to any representative of the departments of health, labor and industrial relations, or commerce and consumer affairs;
- (7) Failing to maintain proof that all RMEs, job site supervisors, and asbestos abatement workers or employees have successfully completed the appropriate asbestos training; and
- (8) Failing to make accessible any records of the licensee for the purpose of inspection for health or safety reasons, to any representative of the departments of health, labor and industrial relations, or commerce and consumer affairs. [Eff and comp 4/18/88; am and comp 12/9/02; comp 4/15/04; comp _____] (Auth: HRS §§444-4, 444-7.5) (Imp: HRS §§444-7, 444-7.5, 444-8, 444-9, 444-11, 444-17)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 16-77, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.

JOHN J. POLISCHECK JR., Chairperson
Contractors License Board

APPROVED AS TO FORM

Deputy Attorney General

Amendment and Compilation of Chapter 16-77
Hawaii Administrative Rules

1. Chapter 16-77, Hawaii Administrative Rules, entitled "Contractors"
is amended and compiled to read as follows: _____

