

SECTION 104 - SCOPE OF WORK

Make the following amendments to said Section:

(I) Amend 104.01 Contract to read as follows:

"104.01 Intent of Contract, Duty of Contractor. The intent of the contract is to provide for the construction, complete in every detail, of the work described at the accepted bid price and within the time established by the contract. The Contractor has the duty to furnish all labor, materials, equipment, tools, transportation, incidentals and supplies and to determine the means, methods and schedules required to complete the work in accordance with the contract documents."

(II) Amend 104.02 Alterations of Plans or Type of Work to read as follows:

"104.02 Changes. The Engineer may at any time, during the progress of the work, by written order and without notice to the sureties, make changes in the work as may be found to be necessary or desirable. Such changes shall not invalidate the contract nor release the surety and the Contractor will perform the work as changed, as though it had been a part of the original contract.

(A) Minor Changes. The Engineer may direct minor changes in the work with no changes in contract price or time of performance. If the Contractor believes a minor change directive justifies an increase in contract price or time it must follow the oral and written notice requirements set forth in Subsection 104.02(B) – Orders and Directives.

(B) Orders and Directives. Only a duly issued change order or field order may alter the contract terms and work requirements. Any order, direction, instruction, interpretation or determination from the Engineer that is not a field order or change order, may be considered as a compensable change only if the Contractor gives the Engineer an oral notice of its intent to treat such order, direction, instruction, interpretation or determination as a change directive before the Contractor acts in conformity with the order, direction, instruction, interpretation or determination but not later than noon of the following working day. The oral notice shall be followed by a written notice of a potential claim that must be delivered to the Engineer within five days after communication of the order, direction, instruction, interpretation, or determination to the Contractor. The written notice of a potential claim shall state the date, circumstances, and source of the order, direction, instruction, interpretation, or determination that the Contractor regards as a compensable change, and provide a detail justification for additional payment for time. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such order or directive shall not be treated as a change for which the Contractor may make

a claim for an increase in the contract time, compensation, or contract price related to such work.

No more than ten working days after receipt of the written notice of potential claim from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of its potential claim if a written response is not issued in the time established. If the Contractor objects to the Engineer's position, it shall file a written claim with the Engineer within 30 days after delivery to the Engineer of the Contractor's written notice of a potential claim. Failure by the Contractor to submit a written notice of a potential claim in the time specified waives all rights for an increase in contract time or compensation related to such work. The protest shall be determined as provided in Subsection 105.18 – Claim for Adjustments and Disputes. In all cases, the Contractor shall proceed with the work as specified in the order, direction, instruction, interpretation, or determination immediately upon providing the Engineer with the oral notice described above, unless otherwise directed in writing by the Engineer.

(C) Penal Sum of the Surety Performance and Payment Bonds. The penal sum of the Surety Performance and Payment Bonds will be adjusted by the amount of each and every contract change order."

(III) Move and Amend 104.02(C) Differing Site Conditions. (See 104.12 – Differing Site Conditions)

(IV) Amend 104.03 Extra Work to read as follows:

"104.03 Field Orders. Upon receipt of the field order the Contractor shall proceed with the work as changed by the field order without delay. If the Contractor does not agree with any of the terms or conditions or the adjustment or nonadjustment to the contract time and/or contract price set forth therein, the Contractor shall file a written notice of potential claim with the Engineer not later than three days after receipt of the field order. No more than ten working days after receipt of the written notice of a potential claim from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of its potential claim if a written response is not issued in the time established. If the Contractor objects to the Engineer's position, it shall file a written claim with the Engineer within 30 days after delivery to the Engineer of the Contractor's written notice of a potential claim. Failure to file the written notice of a potential claim or to protest any portion(s) of the field order by the time specified shall constitute agreement on the part of the Contractor with all the terms, conditions, amounts and adjustment or non-adjustment to contract price and/or contract time set forth in the field order or the non-protested portion of the field order. Timely written notice shall be a non-waivable condition precedent to the assertion of a claim."

95 (V) Amend **104.04 Maintenance of Traffic** to read as follows:

96
97 **"104.04 Maintenance of Traffic.**

98
99 (A) **General.** The Contractor shall keep the road open to traffic during
100 the progress of the work according to Section 645 - Traffic Control Devices.

101
102 The Contractor shall furnish, erect, and maintain lights, barricades,
103 signs and other traffic control devices. Also, the Contractor shall take
104 precautions for the protection of the work and safety of the public according
105 to Section 645 - Work Zone Traffic Control.

106
107 Obstructions to a roadway attributable to construction, maintenance,
108 or engineering survey on or near public streets and highways are a major
109 hazard to motorists, pedestrians and workers at the work site. The
110 Contractor shall take such safety and precautionary measures as may be
111 required according to Chapter 286, HRS; the Hawaii Administrative Rules,
112 Title 19, Subtitle 5, Chapters 127, 128 and 129; and the most current
113 editions or revisions of the MUTCD.

114
115 Where so provided on the plans, the Contractor may bypass traffic
116 over an acceptable detour route. Keep the portion of the project used by
117 public traffic in passable condition. Also, provide and maintain temporary
118 crossings with trails, roads, streets, businesses, parking lots, garages,
119 residences, and farms.

120
121 If elimination of abutting owners' access occurs, do not close the
122 existing access until the replacement access facilities are usable. The
123 Contractor may obtain written permission from the abutting owners setting
124 the conditions for closing the existing access. Submit a copy of this
125 agreement with the abutting owners to the Engineer for acceptance before
126 such work begins.

127
128 Provide a smooth and even surface for public traffic use when working
129 on an existing facility kept open to traffic. Conduct such work on only
130 portion of the roadway. Alternate construction from one side to the other
131 while routing traffic over the opposite side. Place sufficient fill at culvert
132 and bridge locations to permit traffic to cross. Conduct culvert installation
133 on only portions of the roadway to permit safe passage of traffic.

134
135 During subgrade and paving operations, consider use of shoulders
136 for public traffic. If using part-width paving methods, consider use of side
137 of the roadbed opposite the one under construction for public traffic. Keep
138 a passageway wide enough to make at least two lanes of traffic open when
139 sufficient width is available. The Engineer will consider shaping or
140 maintaining the shoulders as included in the contract price of the various
141 contract items and the Department will not make additional compensation.

143 Do not store material or equipment where the material or equipment
144 will interfere with public traffic. Remove equipment and other obstructions
145 to permit free and safe passage of public traffic when each day's work ends
146 or if suspension of construction operations occurs.
147

148 Traffic incidental to other construction projects that abuts the principal
149 routes of travel are part of the public traffic and shall be as required by
150 contract.
151

152 The Contractor shall bear expenses of maintaining traffic over the
153 section of road undergoing improvement or repair. Also, bear expenses of
154 constructing, maintaining, removing, and furnishing approaches, crossings,
155 intersections, and flaggers and their equipment, without direct
156 compensation. Exceptions are as follows:
157

158 **(1) Special Detours.** The Department will cover payment for
159 cost of constructing, maintaining, and removing such detour(s) when
160 the proposal contains an item for "Construction and Maintenance of
161 Detours". Also, the Department will include payment for the
162 construction and removal of temporary bridges and accessory
163 features. The Department will furnish right-of-way for temporary
164 highways or bridges called for under this paragraph.
165

166 **(2) Maintenance of Traffic During Suspension of Work.**
167 Provide safe passage for public traffic through the work site according
168 to Subsection 108.10 - Suspension of Work.
169

170 **(3) Special Maintenance Specified by the Engineer.** The
171 Engineer will pay the Contractor on the basis of unit prices or under
172 Subsection 104.03 - Field Orders if the Engineer specifies the special
173 maintenance. The Engineer will be the sole judge of work to be
174 classified as special maintenance.
175

176 **(B) Traffic Maintenance Plans.** Submit in writing traffic maintenance
177 plans and schedules, including plans and schedules for traffic detours, road
178 or lane closures, lane switches and the placement of temporary traffic
179 control devices, warning signs, barricades and other protective devices, to
180 the Engineer for acceptance at least ten working days before the date such
181 work is scheduled to begin.
182

183 Such plans and schedules shall contain:
184

- 185 **(1)** A brief description of the work,
- 186 **(2)** Dates of work,
- 187 **(3)** Times of day affected,
- 188 **(4)** Proposed public information sign,
189
190
191

192 (5) Proposed news release, and

193
194 (6) Detour layout plans.

195
196 If doing work in a city or town, give the Fire Department at least 24
197 hours notice in writing before blocking or closing off access to streets.
198 Keep fire hydrants accessible to the Fire Department. Do not place
199 material or other obstruction closer to a fire hydrant than permitted by
200 ordinances, rules or regulations. If there are no ordinances, rules or
201 regulations, do not place material or other obstruction within 5 feet of a fire
202 hydrant.
203

204 Make arrangements according to the contract for emergency work that
205 may be required when work is not in progress.

206
207 The Engineer will permit lane closures only from 8:30 A.M. to 3:00
208 P.M.
209

210 Exceptions to the above lane closure hours shall require the
211 Engineer's acceptance in writing.
212

213 The Engineer may allow the Contractor to perform formwork and
214 concrete work during the following hours (as covered by the Community
215 Noise Variance):
216

217 Monday thru Thursday 8 P.M. – Midnight

218
219 Tuesday thru Friday 12:01 A.M. – 7 A.M.
220

221 In addition: If the Contractor needs additional work time to perform
222 formwork and concrete work, the following times will be covered under the
223 Community Noise Variance in specified project locations. Coverage under
224 the variance is granted under the condition that the contractor provides
225 advance written notice to the Department of Health, Noise Radiation and
226 Indoor Air Quality Branch, as well as designated recipients of project
227 information in the immediate area of such construction:
228

229 Friday 6 P.M. – Midnight

230
231 Saturday 12:01 A.M. – 9 A.M.
232 6:00 P.M. – Midnight

233
234 Sunday 24 Hours
235

236 The Contractor may do pavement work, pavement markings, traffic
237 signs, utility adjustments, contra-flow sign posts, centerline and reference
238 survey monuments, standard street survey monuments, guardrails, and
239 dressing of shoulders during the daytime working hours.
240

241 Failure to open lanes to traffic beyond the above lane closure hours
242 shall result in assessment of liquidated damages as specified in Section
243 108.09 - Liquidated Damages for Contractor's Delays.
244

245 The Contractor shall not conduct operations on any roadway involving
246 traffic lane closures or slowdown of traffic on the following dates:
247

- 248 (1) The day preceding a holiday from 3:00 PM to Midnight,
- 249
- 250 (2) All State Holidays,
- 251
- 252 (3) The Thanksgiving Holiday weekend (Thursday, Friday,
- 253 Saturday and Sunday),
- 254
- 255 (4) The two week holiday period for Christmas and New Years,
- 256 and
- 257
- 258 (5) The three week period for the "Beat the School Jam" beginning
- 259 on the third week of August.
- 260

261 No time extension will be given for the above restrictions. The
262 contract time for the project has accounted for any loss of time due to the
263 above restrictions.
264

265 Notify the State and County transportation agencies including Bus
266 Systems Division, Police Department, Fire Department, Ambulance
267 Service, and the Department of Health in writing at least five days before the
268 start of construction.
269

270 Take measures necessary to insure that safe and easily accessible
271 passage is provided for pedestrians who must travel in or near the
272 construction zone.
273

274 The Engineer will consider payment for insuring safe and accessible
275 passage for pedestrians included in the bid price of the various contract
276 items.
277

278 Submit requests for review and acceptance of detours and lane
279 closures that will impact traffic during peak hours before scheduling the work
280 to begin as follows:

- 281 (1) Detours - 8 weeks, and
- 282
- 283 (2) Lane closures - 6 weeks.
- 284

285 Also, these requests shall include:
286

- 287 (1) An explanation of proposed changes to the existing traffic
- 288

289 pattern;

290
291 (2) A schedule of when installing informational and traffic control
292 signs;

293
294 (3) A schedule of when publishing advertisements;

295
296 (4) A plan showing the proposed informational and traffic control
297 signs; and

298
299 (5) A plan showing the lane changes or detours. Plans for
300 multi-lane highway lane changes and detours shall include details of
301 the beginning of the lane changes or detours.

302
303 The Engineer will not make payment for reviewing request submittals.

304
305 (C) **Advertisement.** If requested by the Engineer, place an
306 advertisement in the newspaper for the following traffic pattern changes in
307 operation during peak hours or night work:

308
309 (1) Detours;

310
311 (2) Lane closure;

312
313 (3) Permanent road closure; and

314
315 (4) Permanent new route that changes a previous route.

316
317 The advertisement shall contain the following information:

318
319 (1) Map of traffic pattern change limits;

320
321 (2) Map showing lane(s) closure and detour pattern;

322
323 (3) Notice of starting and ending dates and duration; and

324
325 (4) Explanation of the lane(s) closure or detours "Notice To
326 Motorist".

327
328 The quality of the map shall be as follows:

329
330 (1) The Department will not allow free hand printing or pencil;

331
332 (2) Highlight important feature in bold letters by darkening,
333 cross-hatching, crossing-out or coloring;

334 (3) Minimum size shall be five columns wide and four columns
335 deep. Lesser width columns may be considered to balance against

the size of the drawing;

(4) Text Specifications.

- (a) Work being featured - 3/16 inch text**
- (b) Major roads and features - 1/8 inch text**
- (c) Other roads and features- first letter upper case**
- (d) "Notice to Motorists" in upper case**
- (e) Message - first letter upper case**

(5) Line Thickness.

- (a) Important feature being advertised - thicker than rest of map**
- (b) Directional arrow - bolder than the rest of the lines shown on the map, when important, to show the route traffic should use.**

(6) Show reference direction such as "TO HILO, WAILUKU, HONOLULU, or LIHUE" with arrow.

The Contractor shall submit:

- (1) The "Notice to Motorists" for review and acceptance before placement in the newspaper 6 weeks before the start of work.**
- (2) The actual size of the notice to be published in the newspaper for review and acceptance. The Engineer will not allow reduction of the notices once accepted. The final "Notice to Motorists" submittal shall be a good copy of the camera ready advertisement.**

Place the advertisement for three consecutive days and within one week before the traffic pattern changes in the Honolulu Star-Bulletin and Honolulu Advertiser

Provide message boards as requested by the Engineer prior to lane or ramp closures.

The Contractor is directed to Section 645 - Work Zone Traffic Control for payment of advertisement.

(VI) Amend 104.05 Construction and Maintenance of Detour by deleting the second paragraph in its entirety.

(VII) Amend **104.06 Rights in and Use of Materials Found on the Work** by deleting it in its entirety. (See 106.02 – Natural Material Source)

(VIII) Add the following:

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

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) By unit prices or other price adjustments specified in the contract or subsequently agreed upon;

(3) The Engineer may base the adjustment for a lump sum item on a calculated proportionate unit price. The Engineer will calculate the proportionate unit price by dividing the original contract lump sum price by the actual or original estimated quantity established by the Contract Documents;

(4) In such other manner as the parties may mutually agree;

(5) At the sole option of the Department, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as specified in Subsection 109.04(A) Allowances for Overhead and Profit and the force account provision of 109.04 Payment for Additional Work;

(6) By a determination by the Department of the reasonable and necessary costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as computed by the generally accepted accounting principles and applicable sections of Chapter 3-123 and 3-126 of the HAR and Subsection 109.04(A) Allowances for Overhead and Profit herein."

(IX) Amend **Subsection 105.19 Value Engineering** to read as follows:

"104.10 Value Engineering Incentive Proposal. On any contract in an amount greater than \$100,000, the Contractor shall be entitled to an equitable adjustment to share in cost savings resulting from the value engineering proposal, subject to the following conditions:

(1) A value engineering proposal must result in savings to the State by providing less costly items than those specified in the contract without impairing any of their essential functions and characteristics such as service life, reliability, substitutability, economy of operations, ease of maintenance, and necessary standardized features;

(2) A value engineering proposal shall not be deemed accepted until a change order has been issued establishing the proposed as part of the work;

(3) A value engineering proposal must be submitted in conformity with, and is subject to the terms and conditions of HAR §3-132."

(X) Add the following:

"104.11 Variations in Estimated Quantities. Where the quantity of a unit price item in this contract is estimated on the proposal schedule and where the actual quantity of such pay item varies more than 15 percent above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. The adjustment shall be subject to Subsection 104.09 – Method of Price Adjustment and Subsection 109.05 - Allowances for Overhead and Profit.

104.12 Differing Site Conditions. The Contractor shall promptly and before such conditions are disturbed, notify the Engineer of:

(1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; or

(2) Unknown physical conditions at the site of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

(A) **Adjustments of Price or Time for Performance.** After receipt of the notice, the Engineer shall promptly investigate the site and if it is found that the conditions do materially so differ and cause an increase in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made and the Contract modified by contract change order. Any adjustment in contract price or time made pursuant to this clause shall be determined in accordance with the price and/or time adjustment subsections of this Contract.

(B) **Timeliness of Claim.** No claim of the contractor under this subsection shall be allowed unless: The contractor shall give a verbal notice within 12 hours of discovery of the differing site condition and written notification to the Engineer no later than 5 days after the discovery of the differing site condition. The Engineer in writing may extend the time prescribed in this subsection for giving verbal and written notice. The notices to the Engineer are non-waivable conditions precedent to any claim

under this Section.

(C) No Claim After Final Payment. No request by the Contractor for an equitable adjustment to the contract shall be allowed if asserted after final payment under this Contract.

(D) Knowledge. Nothing contained in this subsection shall be grounds for an adjustment in compensation if the Contractor had actual knowledge of the existence of such conditions prior to the submission of the bids.

104.13 Contract Change Orders. The Engineer will issue sequentially numbered contract change orders at times it deems appropriate during the contract period. A contract change order may contain the adjustment in contract price and/or time for a number of field orders. In all cases, the Contractor shall proceed with the work as changed by the contract change order. No payment for any changes will be made until the contract change order is issued.

104.14 Duty of Contractor to Provide Change Proposals. A field order may request the Contractor to supply the Engineer with a detail proposal for an adjustment to the contract time or contract price for the work described therein. Any such request for a proposal shall not affect the duty of the Contractor to proceed as ordered with the work described in the field order.

The Engineer at times may issue a Request for Change Proposal to the Contractor requesting price and/or time adjustment proposals for contemplated changes in the work. The Request for Change Proposal is not a directive for the Contractor to perform the work described therein.

The Contractor shall submit a detailed written proposal in a time span allowed by the Engineer or if a time span is not stated by the Engineer it shall be within 15 days after receipt of a request for Request for Change Proposal or field order containing a request for proposal. The format shall set forth all charges the Contractor proposes for the change and a detailed justification for the proposed adjustment of the contract time, all properly itemized and supported by sufficient substantiating data to permit evaluation. The Engineer will determine whether the proposal is acceptable.

No payment shall be allowed to the Contractor for pricing or negotiating or research or designs for proposed or actual changes. No time extensions will be granted for delay caused by late Contractor pricing of changes or proposed changes or time spent in negotiation.

The Engineer may accept the entire proposal, or any discrete cost item contained within the proposal, or the proposed adjustment to contract time by a notice in writing to the Contractor delivered to the contractor within thirty days after receipt of the proposal. The written acceptance by the Engineer of all or part of the Contractor's proposal shall create a binding agreement between the parties for

526 that aspect of the change.
527

528 If the Engineer refuses to accept the Contractor's entire proposal, the
529 Engineer may issue a field order for the work; or if a field order has already been
530 issued, the Engineer may issue a supplemental field order establishing new contract
531 prices, the remaining adjustments to contract price and /or contract time for the
532 ordered changes. If the Contractor disagrees with any term, condition or
533 adjustment contained in such field order or supplemental field order, it shall follow
534 the protest procedures set forth in and be subject to the other terms of Subsection
535 104.03 - Field Orders.
536

537 **104.15 Overweight Vehicle Control.** All weight tags for aggregates and
538 hot mix asphalt concrete transported to the worksite shall be submitted daily to the
539 Engineer. The maximum legal total gross weight (W) as calculated by the
540 formulas in HRS 291-35 Gross weight, axle, and wheel loads, for the transporting
541 vehicle shall be clearly indicated on the weight tag. The Engineer may inspect
542 any material transporting vehicle for compliance with HRS 291-34 to 291-36 at no
543 additional cost to the State. The Engineer may refuse entry to or demand the
544 removal from the worksite of any vehicle that exceeds the maximum legal total
545 gross weight and shall inform the appropriate enforcement authority of the violation."
546

547
548 **END OF SECTION 104**
549