

1 **SECTION 108 - PROSECUTION AND PROGRESS**

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3 Make the following amendments to said Section:

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5 **(I) Amend Section 108.01 – Notice to Proceed (NTP)** by revising lines 3 to
6 27 to read as follows:

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8 “A notice to proceed will be issued to the Contractor. It established the
9 date the Contractor is expected to start work. The NTP date is from which
10 contract time will commence.

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12 The Engineer will consult with the Contractor in an effort to set a mutually
13 agreeable notice to proceed date. When the notice to proceed date is set by
14 mutual agreement, Contractor shall have no claim for delay impact costs
15 resulting from the issuance of the notice to proceed for such date. Should the
16 Contractor request a delay of the NTP beyond the 90 days after the effective
17 date of the contract, the Contractor shall have no claim for impact costs resulting
18 from the issuance of the notice to proceed beyond the 90 days. Impact delay
19 costs shall include but shall not be limited to any labor escalation cost, material
20 cost including increased for short supply materials, weather delays, etc. Short
21 supply increases will be calculated using as the base price of the short supply
22 material the price as of the date of NTP. Only if there was a price increase that
23 would have warranted an increase within the 90 days after the effective date of
24 the contract would that amount be considered for payment. Any other increase
25 in price between that increase and the NTP date will not be considered for
26 payment.

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28 In the absence of an agreed notice to proceed date, the Engineer will
29 issue a notice to proceed to the Contractor unilaterally. In the event that the
30 Engineer’s established starting date is more than 90 days after the effective date
31 of the contract, and the delay was solely due to the Hawaii Department of
32 Transportation (HDOT), the Contractor may submit a claim in accordance with,
33 Subsection 107.15 – Disputes and Claims for increased labor and material costs
34 which are directly attributable to the delay beyond the first 90 days caused by
35 HDOT. The contractor may not claim for additional cost if the delay was in part
36 due to the actions of it. The Engineer may suspend the contract before issuing
37 the notice to proceed, in which case the Contractor’s remedies are exclusively
38 those set forth in Subsection 108.10 – Suspension of Work.

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40 The Contractor shall begin work no later than 10 working days from the
41 date in the notice to proceed and shall diligently prosecute the same to
42 completion within the contract time. In the event that the Contractor fails to
43 start the work, the Engineer may terminate the contract in accordance with
44 Subsection 108.11 – Termination of Contract for Cause. The Contractor shall
45 notify the Engineer at least three working days before beginning work.

The Contractor shall not start work if it fails to meet all the requirements of Subsection 108.03 - Preconstruction Data Submittal as well as any other portion of the contract documents that prohibits the start of work if there is a failure of the Contractor to meet the requirements of that portion of the contract documents. Any time lost due to the failure of the Contractor to meet those requirements will be considered a delay caused by the Contractor. The exception to this is the circumstances stated in Section 108 relating to the processing of BMP plan through the Department of Health. In those cases, the impact to the Contractor shall be addressed in the manner stated in that Section. The NTP is not the written permission to start work mentioned in 108.02."

(II) Amend **Subsection 108.05(B)(2) – Delay for Permits** by revising lines 149 to 156 to read as follows:

(2) Delay for Permits. For delays in the routine application and processing time required to obtain necessary permits, including permits to be obtained from State agencies, the Engineer may grant an extension provided that the delay is not caused by the Contractor, and provided that as soon as the delay occurs, the Contractor notifies the Engineer in writing that the permits are not available. Time extensions will be the exclusive relief granted on account of such delays.

(III) Amend **Subsection 108.06(A)(1) - For Contracts \$2,000,000 or less or For Contract Time 100 Working Days or 140 Calendar Days or less** from lines 290 to 296 to read as follows:

"(1) For Contracts \$2,000,000 or less or For Contract Time 100 Working Days or 140 Calendar Days or Less. For contracts of \$2,000,000 or less or for contract time of 100 working days or 140 calendar days or less, the progress schedule will be a multi-colored Time Scaled Logic Diagram (TSLD). The Contractor shall submit a TSLD submittal package meeting the following requirements and having these essential and distinctive elements:"

(IV) Add a new paragraph to **Subsection 108.06(A)(1)** after line 349 to read as follows:

"(m) The minimal nominal size of paper the TSLD shall be printed on shall be 24-inches by 36-inches. The engineer may at not additional cost request the TSLD to be printed on other sizes of paper."

(V) Amend **Subsection 108.06(A)(2) - For Contracts Which Have A Contract Amount More Than \$2,000,000 Or Having A Contract Time Of More**

93 **Than 100 Working Days Or 140 Calendar Days** from lines 351 to 358 to read
94 as follows:

95
96 **"(2) For Contracts Which Have A Contract Amount More**
97 **Than \$2,000,000 Or Having A Contract Time Of More Than 100**
98 **Working Days Or 140 Calendar Days.** For contracts which
99 have a contract amount more than \$2,000,000 or contract time of
100 more than 100 working days or 140 calendar days, the Contractor
101 shall submit a multi-colored Timed-Scaled Logic Diagram (TSLD)
102 and it shall meet the following requirements and have these
103 essential and distinctive elements:"

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105 **(VI) Amend Subsection 108.06(A)(2)(a)** line 360 to read as follows:

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107 **"(a)** The information and requirements listed in Subsection
108 **108.06(A)(1) - For Contracts \$2,000,000 or Less or For Contract**
109 **Time 100 Working Days or 140 Calendar Days or Less."**

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111 **(VII) Add a new sentence at the end of Subsection 108.06(A)(2)(C)** line 422 to
112 read as follows:

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114 "Initial TSLDs shall not show a completion date beyond the contract
115 completion date. Such TSLDs will not be considered in
116 conformance of the contract documents' requirements. Accepting
117 responsibility for liquidated damages due to late completion is not
118 acceptable."

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120 **(VIII) Amend Subsection 108.08 - Liquidated Damages for Failure to**
121 **Complete the Work or Portions of the Work on Time** by revising line 599 to
122 read as follows:

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124 "to the State, in the amount of \$ 1,500.00 per working day."

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126 **(IX) Amend Subsection 108.09 - Rental Fees for Unauthorized Lane**
127 **Closure or Occupancy** from lines 635 to 644 to read as follows:

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129 **"108.09 Rental Fees for Unauthorized Lane Closure or Occupancy.** In
130 addition to all other remedies available to the State for Contractor's breach of the
131 terms of the contract, the Engineer will assess the rental fees in the amount of
132 \$500 for every one-to fifteen-minute increment for each roadway lane
133 encroached upon or closed to public use or occupied beyond the time periods
134 authorized in the contract or by the Engineer. There is no maximum amount
135 that can be assessed per day per lane. The State may, at its discretion,
136 deduct the amount from monies due or that may become due under the contract.
137 The rental fee may be waived in whole or part if the Engineer determines that the
138 unauthorized period of lane closure or occupancy was due to factors beyond the

control of the Contractor. Equipment breakdown is not a cause to waive lane rental."

(X) Amend **Subsection 108.14 – Final Acceptance** from lines 984 to 991 to read as follows:

"108.14 Final Acceptance. When the Engineer finds that the project has been satisfactorily completed in compliance with the contract, the Engineer will notify the Contractor in writing of the project's completion and acceptance effective as of the date of the final inspection. The final acceptance date shall determine end of contract time, liquidated damages for failure to complete the punchlist and commencement of all guaranty periods subject to Subsection 108.16 – Contractor's Responsibility for Work; Risk of Loss or Damage."

END OF SECTION 108