

1 **SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

2
3 Make the following amendments to said Section:

4
5 **(I) Amend Section 107.01 Insurance Requirements** from lines 5 to 81 to
6 read as follows:

7
8 **“(A) Obligation of Contractor.** Contractor shall not commence any
9 work until it obtains, at its own expense, all required insurance described
10 herein. Such insurance shall be provided by an insurance company
11 authorized by the laws of the State to issue such insurance in the State of
12 Hawaii. Coverage by a “Non-Admitted” carrier is permissible provided the
13 carrier has a Best’s Rating of “A-VII” or better. The Contractor shall
14 maintain and ensure all insurance policies are current for the full period of
15 the contract until final acceptance of the work by the State.
16

17 The Certificate of Insurance shall contain: a clause that it is agreed
18 that any insurance maintained by the State of Hawaii will apply in excess
19 of, and not contribute with, insurance provided by this policy; and shall be
20 accompanied by endorsement form CG2010 or equivalent naming the
21 State as an additional insured to the policy which status shall be
22 maintained for the full period of the contract until final acceptance of the
23 work by State.
24

25 The Contractor shall obtain all required insurance as part of the
26 contract price. Where there is a requirement for the State of Hawaii and
27 its officers and employees to be named as additional insureds under any
28 Contractor’s insurance policy, before the State of Hawaii issues the Notice
29 to Proceed, the Contractor shall obtain and submit to the Engineer a
30 Certificate of Insurance and a written policy endorsement that confirms the
31 State of Hawaii and its officers and employees are additional insureds for
32 the specific State project number and project title under such insurance
33 policies. The written policy endorsement must be issued by the insurance
34 company insuring the Contractor for the specified policy type or by an
35 agent of such insurance company who is vested with the authority to issue
36 a written policy endorsement. The insurer’s agent shall also submit
37 written confirmation of such authority to bind the insurer. Any delays in
38 the issuance of the Notice to Proceed attributed to the failure to obtain the
39 proof of the State of Hawaii and its officers and employees’ additional
40 insured status shall be charged to the Contractor.
41

42 A mere Certificate of Insurance issued by a broker who represents
43 the Contractor (but not the Contractor’s insurer), or by any other party who
44 is not authorized to contractually name the State as an additional insured
45 under the Contractor’s insurance policy, is not sufficient to meet the
46 Contractor’s insurance obligations.

47
48 Certificates shall contain a provision that coverages being certified
49 will not be cancelled or materially changed without giving the Engineer at
50 least thirty (30) days prior written notice. Contractor will immediately
51 provide written notice to the Director should any of the insurance policies
52 evidenced on its Certificate of Insurance form be cancelled, reduced in
53 scope or coverage, or not renewed upon expiration. Should any policy be
54 canceled before final acceptance of the work by the State, and the
55 Contractor fails to immediately procure replacement insurance as
56 specified, the State, in addition to all other remedies it may have for such
57 breach, reserves the right to procure such insurance and deduct the cost
58 thereof from any money due or to become due to the Contractor.
59

60 Nothing contained in these insurance requirements is to be
61 construed as limiting the extent of Contractor's responsibility for payment
62 of damages resulting from its operations under this contract, including the
63 Contractor's obligation to pay liquidated damages, nor shall it affect the
64 Contractor's separate and independent duty to defend, indemnify and hold
65 the State harmless pursuant to other provisions of this contract. In no
66 instance will the State's exercise of an option to occupy and use
67 completed portions of the work relieve the Contractor of its obligation to
68 maintain the required insurance until the date of final acceptance of the
69 work.
70

71 All insurance described herein shall be primary and cover the
72 insured for all work to be performed under the contract, all work performed
73 incidental thereto or directly or indirectly connected therewith, including
74 but not limited to traffic detour work, barricades, warnings, diversions, lane
75 closures, and other work performed outside the work area and all change
76 order work.
77

78 The Contractor shall, from time to time, furnish the Engineer, when
79 requested, satisfactory proof of coverage of each type of insurance
80 required covering the work. Failure to comply with the Engineer's request
81 may result in suspension of the work, and shall be sufficient grounds to
82 withhold future payments due the Contractor and to terminate the contract
83 for Contractor's default.
84

85 **(B) Types of Insurance.** Contractor shall purchase and maintain
86 insurance described below which shall provide coverage against claims
87 arising out of the Contractor's operations under the contract, whether such
88 operations be by the Contractor itself or by any subcontractor or by
89 anyone directly or indirectly employed by any of them or by anyone for
90 whose acts any of them may be liable.
91

(1) **Workers' Compensation.** The Contractor shall obtain worker's compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker's Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.

(2) **Auto Liability.** The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a Combined single Limit of not less than \$1,000,000 per occurrence for bodily injury and property damage with the State of Hawaii named as additional insured. Refer to SPECIAL CONDITIONS for any additional requirements.

(3) **General Liability.** The Contractor shall obtain General Liability insurance with a limit of not less than \$2,000,000 per occurrence and in the Aggregates for each of the following:

- (a) Products - Completed/Operations Aggregate,
- (b) Personal & Advertising Injury, and
- (c) Bodily Injury & Property Damage

The General Liability insurance shall include the State as an Additional Insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies. Refer to SPECIAL CONDITIONS for any additional requirements."

(II) Amend **107.03 – Working Hours; Night Work**, from line 140 to line 142 to read as follows:

"107.03 – Working Hours; Night Work. All paving works including cold-planing and reconstruction of weakened pavement areas shall be done at night.

Night time work shall not be done during the period from September 15, to December 31.

Perform night work only as follows:

Sunday thru Thursday	9:00 P.M. – 12:00 Midnight
Monday thru Friday	Midnight – 5:00 A.M.

Do not work on Friday nights and Saturdays or as specified by the Engineer. Sunday's work will be part of Monday's working day.

The Engineer will permit the Contractor to close one lane of traffic during night time working hours.

Pavement marking, traffic signing, grading and dressing of shoulder may be done during daytime working hours.

Daytime work shall be conducted between the hours of 9:30 A.M. and 1:30 P.M."

Upon Award of the project, the Contractor shall apply for a Noise Variance for this project through the Department of Health according to 'Hawaii Administrative Rules Title 11, Chapter 11-46-8' for night work. If the variance is not granted or should the Department of Health modify, suspend or revoke the Noise Variance, the State will have the right to have part or all of the contract work done during the day. The Engineer and the Contractor will negotiate compensation for doing such work during the day.

As part of obtaining the Noise Variance, the Contractor shall as required by DOH prepare all material and provide public notifications such as, but not limited to, mailings and newspaper notices. The Contractor shall coordinate with the Engineer and DOH for any public meetings required. The Contractor shall secure the location, attend, host, and prepare all materials necessary for public meetings.

The Noise Variance application shall be from December 1, 2015 to June 30, 2017 and shall allow work during the following hours:

Sunday thru Thursday nights, from 9:00 pm to 12:00 midnight
Monday thru Friday mornings, from 12:00 midnight to 5:00 am

The following are assumed to be conditions of the DOH noise variance and the Contractor shall assume these conditions in preparing their proposal for this Contract:

(1) Use of jackhammers, jumping jacks, hoe rams, and vibratory sheetpile drivers shall be prohibited after 10:00 pm.

(2) Use of cold planer shall be prohibited after 12:00 am.

(3) Contractor shall make every effort to minimize noise emanating from the project.

(4) The use of reverse signal alarms shall be prohibited between 8:00 pm and 7:00 am. The alternative method utilizing a ground guide for signaling shall be employed.

(5) Traffic noise from heavy vehicles traveling to and from the construction site shall be minimized near residences.

(6) The Contractor shall have a job-site inspector to whom immediate complaints can be forwarded for prompt response and who shall have the general responsibility of monitoring quiet work procedures.

(7) The Contractor shall give sufficient notice regarding the project to any residents that may be impacted by the nighttime activity. The notification for the planned nighttime activity shall also contain the name and telephone number of the job-site inspector. In addition, a copy of any notifications, as well as progress reports, shall be sent to the Indoor and Radiological Health Branch, State Department of Health.

(8) If noise level is such that the numerous complaints are received by the Department, the Contractor shall cease operations upon receipt of an order and complete the project during hours on weekdays and weekends as directed.

(9) The Contractor shall notify the Indoor and Radiological Health Branch, State Department of Health, as to the date and time of any variance hour activity as soon as the dates are confirmed and also when the project is completed.

(10) Should the duration of the project continue beyond the expiration date, the Contractor shall submit a request for extension to the Engineer along with an updated work schedule at least one (1) month prior to the expiration date.

(11) Pursuant to H.R.S., Chapter 342F, Section 342F-5(d)(3), the Contractor shall perform noise sampling during the variance hours and report the results of such sampling to the Indoor and Radiological Health Branch."

(III) Add **Section 107.18 Citizen and Residential Labor Force** after line 745 to read as follows:

"107.18 Citizen and Residential Labor Force.

(A) **Citizen Labor.** No person shall be employed as a laborer or mechanic unless such person is a citizen of the United States or eligible to become one; provided that persons without such qualifications may be employed with the approval of the Governor until persons who are citizens and are competent for such services are available for hire.

(B) Residential Labor Force. In accordance with Act 192; SLH 2011, no less than eighty (80) percent of the bidder's labor force working on the contract shall be provided by Hawaii residents. This act applies to all construction procurements under HRS Chapter 103D; however this act does not apply to procurements for professional services under Section 103D-304 and small purchases under Section 103D-305. This act is also applicable to any subcontract of \$50,000.00 or more in connection with this contract.

Resident means a person who is physically present in the State of Hawaii at the time the person claims to have established the person's domicile in the State of Hawaii and shows the person's intent is to make Hawaii the person's primary residence.

(C) Percentage of workforce shall be determined by dividing the labor hours (including subcontractors) provided by residents working on the project divided by the total number of hours worked by all employees of the contractor in the performance of the contract. Hours worked by employees within shortage trades as determined by the Department of Labor and Industrial Relations shall not be included in the calculation of this percentage.

(D) Certification of compliance with the forgoing provisions shall be made by the contractor in the form of a written oath submitted to the Procurement Officer on a monthly basis for the duration of the contract.

(E) Sanctions for non compliance with these provisions are as follows:

(1) With respect to the General Contractor, withholding of payment on the contract until the Contractor or its Subcontractor complies with HRS Chapter 103B as amended by Act 192, SLH 2011.

(2) Proceedings for debarment or suspension of the Contractor or Subcontractor under Hawaii Revised Statutes § 103D-702.

This Section shall not apply when its application will disqualify the State from receiving federal funds or aid."

END OF SECTION 107