

1 **SECTION 105 - CONTROL OF WORK**

2
3 Make the following amendments to said Section:

4
5 **(I) Amend 105.01 Authority of the Engineer** to read as follows:

6
7 **"105.01 Authority.**

8
9 **(A) Authority of the Engineer.** The Engineer is the
10 representative of the Director and has all the authority of the
11 Director with respect to the contract. The Engineer will make
12 decisions on all questions that may arise regarding the contract,
13 such as, but not limited to:

14
15 **(1)** Interpretation of the contract documents;

16
17 **(2)** Acceptability of the materials furnished and work performed;

18
19 **(3)** Manner of performance and rate of progress of the work;

20
21 **(4)** Acceptable fulfillment of the contract on the part of the
22 Contractor;

23
24 **(5)** Compensation under the contract.

25
26 The Engineer's decisions on questions, claims, and disputes will
27 be final and conclusive subject to Subsection 105.18 – Disputes and
28 Claims.

29
30 The Engineer may delegate specific authority to act for the
31 Engineer to a specific person or persons. Such delegation of authority
32 shall be established in writing and shall become effective upon delivery to
33 the Contractor.

34
35 **(B) Authority of the Inspectors.** Inspectors, as a representative of
36 the Engineer or other agencies, will inspect the work done and materials
37 furnished. Such inspection may extend to the preparation, fabrication
38 or manufacture of the materials to be used. The Inspector does not have
39 authority vested in the Engineer unless specifically delegated in writing.
40 The Inspector may not alter or waive the provisions of the contract, issue
41 instructions contrary to the contract, or act as agent or representative of
42 the Contractor.

43
44 Failure of an Inspector at any time to reject non-conforming work
45 shall not be considered a waiver of the State's right to require work in
46 strict conformity with the contract documents as a condition of final
47 acceptance.

48 **(C) Authority of the Consultant and Construction Management.**

49 The State may engage consultants and construction managements to
50 perform duties in connection with the work. Unless otherwise specified
51 in writing to the Contractor, such retained consultants and construction
52 managements shall have no greater authority than an Inspector.”
53

54 **(II) Amend 105.02 Contract Plans and Working and Shop Drawings to**
55 **read as follows:**
56

57 **“105.02 Shop Drawings.**
58

59 **(A) Shop Drawing Requirements.** The Contractor shall prepare,
60 thoroughly check, approve, and submit all shop drawings to the Engineer
61 for review. Whenever possible, electronic files in MS Word, MS Excel
62 and Microstation format shall be submitted with the hard copies. The
63 Contractor shall indicate its approval by stamping and signing each
64 submittal of shop drawing. Any shop drawing submitted without being
65 reviewed, stamped and signed will be returned as an incomplete
66 submittal, and any delay caused thereby shall be the Contractor’s
67 responsibility.
68

69 All drawings, which require an engineering stamp, shall be
70 stamped by professional engineers licensed in the State of Hawaii.
71 Shop drawings shall indicate in detail all parts of an item of work,
72 including erection and setting instructions and engagements with work of
73 other trades or other separate contractors. Shop drawings for structural
74 steel, millwork, pre-cast concrete and falsework, formwork or centering
75 with heights of 40 feet or more or open spans of 20 feet or more shall
76 consist of calculations, fabrication details, erection drawings and other
77 shop drawings, as necessary, to show the details, dimensions, sizes of
78 members, anchor bolt plans, insert locations and other information
79 necessary for the complete fabrication and erection of the structure to be
80 constructed. Shop drawings shall also include stress sheets, drawings,
81 bending diagrams for reinforcing steel, and plans for erection, falsework,
82 framework, cofferdam, and other items or such other similar data
83 required for the successful completion of the work.
84

85 All shop drawings as required by the contract, or as determined by
86 the Engineer to be necessary to illustrate details of the work shall be
87 submitted to the Engineer with such promptness as to cause no delay in
88 the work or the work of any other Contractor. Delay caused by the
89 failure of the Contractor to submit shop drawings on a timely basis to
90 allow for review, possible resubmittal and acceptance will not be
91 considered as a justifiable reason for a contract time extension.
92 Contractor, at its own risk, may proceed with the work affected by the
93 shop drawings after they are submitted but before receiving acceptance.
94 The State shall not be liable for any increase in contract price or contract

time required for the correction of work done without the benefit of accepted shop drawings.

The Contractor shall not make changes to the accepted shop drawings without submitting a written request to the Engineer and reviewing a written acceptance of the change by the Engineer.

By approving and submitting shop drawings, the Contractor thereby represents that it has determined and verified all field measurements and field construction criteria, or will do so, and that it has checked and coordinated each shop drawing with the requirements of the work and the contract documents. When shop drawings are prepared and processed before field measurements and field construction criteria can be or have been determined or verified, the Contractor shall make all necessary adjustments in the work or resubmit further shop drawings, all at no increase in contract price or contract time.

The shop drawing submitted must be accompanied by a transmittal giving a list of the titles and numbers of the drawings. Each series shall be numbered consecutively for ready reference and the submittal shall be marked with enough information to identify itself, including date, project name and number, name of the submitting Contractor or subcontractor, revision number, and revision box which gives date of the revision and what the revisions changed.

The size of the sheets that shop drawings are prepared on shall be as appropriate to suit the drawing being presented so that the information is clearly and legibly depicted. The Engineer will determine what size is appropriate.

When required by the contract, the Contractor shall submit to the Engineer descriptive sheets such as brochures, catalogs and illustrations, which will completely describe the material, product, equipment, furniture or appliances to be used in the project as shown in the drawings and specifications and indicate such conformity by marking, or stamping and signing each sheet.

(B) Submittal for Deviations and Variances. The Contractor shall include with the submittal, written notification clearly identifying and summarizing all deviations or variances from the contract drawings, specifications and other contract documents. The variances shall also be clearly indicated on the shop drawing, descriptive sheet, and material sample or color sample. Failure to so notify of and identify such variance shall be grounds for rejection of the related work or materials, notwithstanding that the Engineer accepted the submittal. If the variances are not acceptable to the Engineer, the Contractor will be required to

furnish the item as specified or indicated on the contract documents at no increase in contract price or contract time."

(III) Delete **105.03 Conformity with the Contract** in its entirety and replace it with the following:

"105.03 Review and Acceptance Process. The Engineer will complete the review of the submittal within 30 days from the date of receipt unless a different review time is established by the contract documents. The Engineer will advise the Contractor, in writing, as to the acceptability of the submittal. Should the Engineer partially or totally reject the submittal, the Contractor shall modify the submittal as required by the Engineer and resubmit the item within 15 days. At this time, the review and acceptance cycle described above shall begin again. The review and acceptance cycle shall begin again as described above each time the submittal is returned to the Contractor for modification. If the volume of the shop drawings submitted at any time for review is unusually large, the Contractor shall inform the Engineer of its preferred order for reviews, and the Engineer will use reasonable efforts to accommodate the Contractor's priority.

The acceptance by the Engineer of the Contractor's submittal relates only to their sufficiency and compliance with the intention of the contract. Acceptance by the Engineer of the Contractor's submittal does not relieve the Contractor of any responsibility for accuracy of dimensions, details, and proper fit, and for agreement and conformity of submittal with the contract drawings and specifications. Nor will the Engineer's acceptance relieve the Contractor of responsibility for variance from the contract documents unless the Contractor, at the time of submittal, has provided notice and identification of such variances required by this section. Acceptance of a variance shall not justify a contract price or time adjustment unless the contractor requests such adjustment at the time of submittal and the adjustment is explicitly agreed to in writing by the Engineer. Any such request shall include price details and proposed scheduling modifications. Acceptance of a variance is subject to all contract terms, stipulations and covenants, and is without prejudice to any and all rights under the surety bond.

If the Engineer returns a submittal to the Contractor that has been rejected, the Contractor, so as not to delay the work, shall promptly make a resubmittal conforming to the requirements of the contract documents and indicating in writing on the transmittal and the subject submittal what portions of the resubmittal have been altered in order to meet the acceptance of the Engineer. Any other differences between the resubmittal and the prior submittal shall also be specifically described in the transmittal.

No mark or notation made by the Engineer on or accompanying the return of any submittal to the Contractor shall be considered a request or order for a change in work. If the Contractor believes any such mark or notation constitutes a request for a change in the work for which it is entitled to an adjustment in

contract price or contract time, or both, the Contractor must follow the procedures established in Subsection 104.02 – Changes or lose its right to claim for an adjustment.

(IV) Amend 105.04 **Furnishing and Coordination of the Contract** to read as follows:

“105.04 Interpretations of the Contract Documents; Drawings.

(A) **Interpretations of the Contract Documents; Conflicts and Ambiguity.** The contract documents are complementary. Any requirement occurring in one document is as binding as though occurring in all. A stricter requirement prevails over any less strict requirement. The stricter requirement will be the requirement that provides the greater product life, durability, strength and function.

The Contractor shall carefully study and compare the contract documents with each other, with field conditions and with the information furnished by the State and shall immediately report to the Engineer errors, conflicts, ambiguities, inconsistencies, or omissions discovered. Should an item not be sufficiently detailed or explained in the contract documents, the Contractor shall report to the Engineer immediately and request the Engineer's clarification and interpretation. The Engineer will issue a clarification or interpretation that is consistent with the intent of and reasonably inferred from the contract documents.

(B) **Priority Within Drawings.**

(1) Numerical dimensions govern over scaled dimensions,

(2) Larger scale drawings govern over smaller scale drawings, and

(3) Notations, directions, and dimensions (whether word or numerical) control over schedules and table references.

Any requirement occurring in one or more of the sheets is as binding as though occurring in all applicable sheets.

(V) Delete 105.05 **Cooperation with Utility Companies** in its entirety. (See 107.21 – Utilities and Services).

(VI) Amend 105.06 **Cooperation Between Contractors** to read as follows:

“105.06 Coordination Between the Contractors. Other work by other Contractors may be in progress within or near the project limits. Each Contractor shall conduct work so as not to hinder the progress of the work by other

Contractors within or near the project limit. Each Contractor shall be responsible for any damage it causes to work of another Contractor. Contractors shall cooperate with each other, including but not limited to:

- (1) Coordinating their work schedules and traffic control plans;
- (2) Placing and disposing the materials used;
- (3) Operating and storage of equipment.

(VII) Amend **105.07 Construction Stakes, Lines and Grade** to read as follows:

"105.07 Construction Stakes, Lines and Grades.

(A) General. The Contractor shall survey and stake out the work including verification and establishment of all lines, grades, dimensions, and elevations within the tolerances shown in Table 105.10-1 – Construction Survey and Staking Tolerances. The Contractor shall prepare and maintain field notes and supporting data in a manner acceptable to the Engineer. The field notes and supporting data shall be made available to the Engineer immediately upon request. The personnel doing the survey work and preparing the calculations derived therefrom shall be made available by the Contractor to the Engineer for explanation, clarification, or both, immediately upon request.

The Contractor shall immediately correct or replace deficient or inaccurate layout and construction work at no increase in contract price or contract time.

(B) Survey and Staking Requirements. The Engineer will furnish control points for the project limits, points of intersection, and benchmarks set by the Engineer or others. The Contractor shall be responsible for the laying out of all other necessary work from the given information. The Contractor shall reset the layout as many times as necessary to perform the work.

The Contractor shall preserve control points and stakes or marks that the Engineer or others have furnish. If the Contractor destroys or disturbs the control points, stakes, or marks, the State will charge the Contractor the cost of replacing the stakes or marks.

Table 105.10-1 Construction Survey and Staking Tolerances⁽¹⁾		
Staking Phase	Horizontal	Vertical
Existing State network control points	±0.06 feet	±0.035 feet × \sqrt{M} ⁽²⁾
Local supplemental control points set from existing State network points	±0.03 feet	±0.01 feet × \sqrt{N} ⁽³⁾
Centerline points ⁽⁴⁾ — (PC), (PT), (POT), and (POC) including references	±0.03 feet	±0.03 feet
Other centerline points	±0.16 feet	±0.16 feet
Cross-section points and slope stakes ⁽⁵⁾	±0.16 feet	±0.16 feet
Slope stake references ⁽⁵⁾	±0.16 feet	±0.16 feet
Culverts, ditches, and minor drainage structures	±0.16 feet	±0.06 feet
Retaining walls and curb and gutter	±0.06 feet	±0.03 feet
Bridge substructures	±0.03 feet ⁽⁶⁾	±0.03 feet
Bridge superstructures	±0.03 feet ⁽⁶⁾	±0.03 feet
Clearing and grubbing limits	±2.00 feet	—
Roadway subgrade finish stakes ^{(7) (8)}	±0.16 feet	±0.03 feet
Roadway finish stakes ^{(7) (8)}	±0.16 feet	±0.03 feet
<p>(1) At 95% confidence level. Tolerances are relative to existing State network control points.</p> <p>(2) M is the distance in miles.</p> <p>(3) N is the number of instrument setups.</p> <p>(4) Centerline points: PC - point of curve, PT - point of tangent, POT - point on tangent, POC - point on curve.</p> <p>(5) Take the cross-sections normal to the centerline ±1 degree.</p> <p>(6) Bridge control is established as a local network and the tolerances are relative to that network.</p> <p>(7) Includes paved ditches.</p> <p>(8) Set stakes at the top of subgrade and the top of each aggregate course.</p>		

278

279 (VIII) Delete 105.08 Authority and Duties of Project Engineer in its entirety.
280 (See 105.01 – Authority).

(IX) Delete 105.09 Duties of the Inspector in its entirety. (See 105.01 – Authority).

(X) Amend 105.10 Inspection of Work to read as follows:

105.10 Inspection of the Work and Materials. Materials and each part or details of the work shall be subject to inspection by the Engineer. The Contractor shall furnish the Engineer information, assistance, and provide appropriate safeguards and equipment to allow a complete inspection to be made.

The Engineer may inspect the production, fabrication, and manufacture of materials and items that are to be incorporated into the work. The Contractor shall ensure that the producer, fabricator, and manufacturer provide access to the Engineer, without adjustment in contract price or contract time, at the source of such materials and items or at any other place such materials or items may be located before they are incorporated into the work. The Engineer will comply with safety procedures established by the facility. When any government agency or any utility company is to pay a portion of the cost of the work covered by this contract, they shall have the right to inspect the work. Such inspection shall not make that government or utility company a party to this contract.

For any inspection, the Contractor shall expose or uncover such portions of the work as requested by the Engineer. After inspection, the Contractor shall restore that portion of the work to the standard required by the contract. When the Engineer orders an inspection that is not considered a normal daily, pre-final or final inspection, that requires uncovering, damage to or destruction of or work in place:

(1) If the exposed and inspected work conforms to the contract requirements, the State will reimburse the reasonable costs of exposing, inspecting and or restoring the work, as extra work and extend contract time as appropriate.

(2) If the exposed and inspected work is non-conforming or otherwise non-acceptable, the costs and time relating to the exposing, inspecting and restoring of the work is not reimbursable.

(3) No reimbursement will be allowed for the costs and time of exposing, inspecting and restoring work that the Engineer had not been given reasonable opportunity to inspect before it was covered.

When the contract documents or a written directive from the Engineer requires that certain work not proceed until the Engineer is given notice and the opportunity to inspect, the Engineer may order the work done or materials used without the Engineer having been given notice and opportunity to inspect, to be removed and replaced at no increase in contract price or contract time.

Inspections are performed for the exclusive benefit of the State. The inspection of or the failure to inspect the work shall not relieve the Contractor of obligations to fulfill the contract as prescribed, to correct defective work, and to replace unsuitable or rejected materials regardless of whether payment for such work has been made."

(XI) Amend 105.12 Removal of Unacceptable and Unauthorized Work to read as follows:

"105.12 Removal of Non-Conforming and Unauthorized Work. All work that does not conform to the requirements of the contract shall be remedied or removed and replaced by the Contractor at no increase in contract price, contract time, or both. No payment will be made for non-conforming work.

Any work done beyond the work limits shown on the drawings and specifications or established by the Engineer or any additional work done without written authority will be considered as unauthorized work. No payment will be made for unauthorized work. Unauthorized work may be ordered removed at no increase in contract price, contract time, or both.

The Engineer may require that the Contractor submit a schedule acceptable to the Engineer for the performance of corrective or remedial work at the convenience of the State. Should the Contractor fail to submit an acceptable schedule or fail to comply with the accepted schedule for performance of corrective or remedial work, or otherwise fail to comply with any order of the Engineer regarding remedial, corrective, removal and replacement work, the Engineer shall have the authority, in addition to all other remedies, provided by contract or law, to cause non-conforming work to be remedied or removed and replaced, and unauthorized work removed, by someone other than the Contractor. The Engineer may charge the Contractor the cost of such work, or to deduct the costs from any monies due or to become due the Contractor, or combination thereof."

(XII) Delete 105.13 Load Restrictions in its entirety. See 104.15 – Overweight Vehicle Control and 401.05(B)(5) – Material Transfer Vehicle (MTV).

(XIII) Amend 105.14 Maintenance to read as follows:

"105.14 Maintenance. The Contractor shall maintain the work including the removal of all graffiti and defacement, until final acceptance of the project. If the Contractor fails to remedy unsatisfactory maintenance after receipt of a written directive from the Engineer, the Engineer shall have the authority, in addition to other remedies by law, to have such maintenance performed by someone other than the Contractor, to charge the Contractor for such maintenance or deduct the cost of such maintenance from monies due or become due to the Contractor."

(XIV) Amend 105.17 **Acceptance** to read as follows:

"105.17 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 and will notify the Contractor in writing of its 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."

(XV) Amend 105.18 **Claims for Adjustment and Disputes** to read as follows:

"105.18 Disputes and Claims.

(A) Written Notice A Condition Precedent to Claim. As a condition precedent to any claim for damages, or any matter dealing with contract price or contract time, the Contractor must give notice of a potential claim in writing as required by the contract documents including but not limited to the following Subsections of these general provisions:

- (1) 104.02 – Changes
- (2) 104.03 – Field Orders
- (3) 104.12 – Differing Site Conditions
- (4) 104.13 – Contract Change Orders
- (5) 105.02(B) – Review and Acceptance Process
- (6) 106.03 – Sample Submittals
- (7) 108.07 – Contract Time

(B) Contractor's Duty to Maintain Accurate and Contemporaneous Records. Upon delivering written notice of a potential claim as described in Subsection 105.18(A) – Written Notice A Condition Precedent to Claim, the Contractor has the duty to support and substantiate all claims by maintaining accurate, contemporaneous records of the subject work and the time and costs thereof. The Engineer may direct the manner and the format in which such records must be prepared, maintained, and verified. The Contractor shall comply with such directives at no increase in contract price or contract time. Any directive from the Engineer regarding the manner and format for the keeping of records associated with the potential claim shall not in any way be deemed an agreement by the State regarding the validity of any element of the claim.

(C) Contractor to Proceed with Work. The Contractor shall at all times continue with performance of the contract in full compliance with the directions of the Engineer. Continued performance by the Contractor shall not prejudice any claim for damages or any matter dealing with contract price or contract time provided that the notice of a potential claim

is given in writing by the Contractor in the manner and within the time set forth in the contract documents.

(D) Making of a Claim. All Contractors' claims for damages or any matter dealing with contract price or contract time shall be submitted in writing to the Engineer. The written submission (THE CLAIM) shall be clearly identified and labeled as a claim. The Contractor shall sequentially number its claims in the chronological order submitted to the Engineer. No claim shall be valid if it is delivered to the Engineer after the date of final acceptance or later than 180 days after Contractor's delivery of its notice of potential claim, whichever comes first.

The Claim shall, at a minimum, contain the following:

(1) A detailed description of the facts and circumstances that justify every element of claim. The detailed description shall include, but is not limited to, providing all necessary dates, locations, and items of work affected by the claim.

(2) The specific provisions of the contract or laws which support the claim and a statement of the reasons why such provisions support the claim.

(3) A copy of the related written notice of potential claim required by Subsection 105.18(A) – Written Notice A Condition Precedent to Claim.

(4) Any other documents that support the claim.

(5) If an adjustment of time for the performance of the contract is sought:

(a) The specific days and dates for which it is sought.

(b) The specific reasons the Contractor believes a time adjustment should be granted.

(c) The specific provisions of the contract under which additional time is sought.

(d) The Contractor's detailed analysis of its previously submitted time scaled logic diagram (TSLD) schedule and impact on the critical path.

(6) If additional monetary compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:

469 (a) **Labor.** Listing of individuals, description and location
470 of work performed, classification, hours worked, wage rate,
471 fringe benefits, employee number if available, etc.
472

473 (b) **Materials.** Invoices, purchase orders, evidence of
474 payment, descriptions and quantities, etc.
475

476 (c) **Equipment.** Detailed description (make, model,
477 year, attachments, serial number, etc.), hours of use and
478 dates of use. Equipment rates shall be subject to the terms
479 and limitations as set forth in Subsection 109.02 – Payment
480 for Additional and Force Account Work.
481

482 (d) **Contractor's Margin for Profit and Overhead.**
483

484 (e) Other categories as specified by the Contractor or the
485 State.
486

487 (7) The claim shall be certified on behalf of the Contractor by an
488 authorized representative, as follows:
489

490 Under penalty of law for submission of false claims, false
491 statements, and misrepresentation, the undersigned,
492

493 _____
(Name)

494 _____
(Title)

495 _____
(Company)
496

497 hereby certifies that the claim is made in good faith; that the
498 supporting data are accurate and complete to the best of my
499 knowledge and belief; that the amount requested accurately
500 reflects the contract adjustment for which the Contractor believes
501 the State of Hawaii is liable; and that I am duly authorized to certify
502 the claim on behalf of the Contractor.
503
504
505
506

507 _____
Signature

_____ Date

508
509 (E) **Engineer's Review and Decision.** The Engineer shall review
510 the claim, and may request and the Contractor shall provide additional
511 information, documentation, and other evidence from the Contractor.
512 The Engineer may conduct interviews with Contractor's employees and
513 other persons having knowledge related to the claim.
514

The Engineer shall render a written decision on the claim after the claim is complete and fully documented, as follows:

- (i) Within 60 days for claims less than \$50,000
- (ii) Within 90 days on claims exceeding \$50,000.

If the Engineer does not issue a written decision within the time period described herein, then the Contractor may proceed as if the claim has been denied in its entirety. If the claim submittal is found to be incomplete, the Contractor shall be notified to provide the additional information that is required. When this occurs, the Engineer's review time will be adjusted as deemed appropriate and the Contractor will be notified.

The decision will be sent to the Contractor by Certified Mail, Return Receipt Requested.

(F) Appeal of the Engineer's Decision.

(1) Any Contractor aggrieved by an adverse decision by the Engineer on a claim may appeal the decision to the Director, as head of the purchasing agency as specified in the Hawaii Administrative Rules for Procurement Disputes.

(2) Appeals of the Engineer's decision must be filed in writing not later than 30 days after delivery of the Engineer's decision on the claim to the Contractor, or if no written decision is delivered, within 30 days after the deadline for the Engineer's decision. A copy of the notice of appeal of the Engineer's decision shall be delivered to the Engineer

(3) The record on appeal by the Contractor to the Director shall be limited to the Claim as submitted by the Contractor described in Subsection 107.15(D) – Making of a Claim, the Engineer's response to the claim, the project file, and any other material or evidence the Director, in the Director's discretion, believes may be useful in deciding the merits of the appeal.

(4) In its notice of appeal of the Engineer's decision, the Contractor shall provide specific citations to the Engineer's decision and explanations as to why the Contractor believes the Engineer's decision was incorrect.

(5) All controversies and claims which are appealed to the Director shall be decided by the Director within 90 days after the filing of the appeal by the Contractor; provided that:

(a) If the Director does not issue a written decision within 90 calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if the appeal was denied.

(b) The Director immediately furnishes a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

(c) Any such decision shall be final and conclusive, unless fraudulent, or unless the Contractor brings an action seeking judicial review of the decision in a Hawaii circuit court within the six months from the date of receipt of the decision.

(G) Contractor's Duty to Continue Work. During the Claim review and appeal process including any litigation in relation to the Claim, the Contractor shall proceed diligently with performance of this contract, except where:

(1) The State has suspended the work, or has terminated the contract for default of the Contractor or for the convenience of the State;

(2) There has been an alleged material breach of contract by the State excusing further performance by the Contractor; provided that in such event the Contractor shall proceed diligently with the performance of the contract where the Director has made a written determination that continuation of work under the contract is essential to the public health and safety."

(XVI) Delete 105.19 Value Engineering in its entirety. (See 104.10 – Value Engineering Incentive Proposal).

(XVII) Amend 105.20(A) General by revising the first sentence to read as follows:

"(A) General. The Contractor and the Department will establish a Disputes Review Board (Board) when the proposal amount is more than fifty million dollars (\$50,000,000) or the completion time is more than 360 working days."

(XVIII) Add the following:

"105.21 Coordination Between the Contractor and the State.

609 **(A) Furnishing Drawings and Special Provisions.** The State will
610 furnish the Contractor 12 sets of the project plans and special provisions.
611 The project plans furnished will be the same size as that issued for
612 bidding purposes except as noted in Section 648 – Field-Posted
613 Drawings. The Contractor shall have and maintain at least one set of
614 plans and specifications on the work site, at all times.

615
616 **(B) Superintendent.** The Contractor shall have a competent
617 superintendent on the work site while work is being performed under the
618 contract. The superintendent shall be able to read and understand the
619 contract documents, shall be experienced in the type of project being
620 undertaken and the work being performed, and shall be fluent in the
621 English language. If a superintendent is not present at the work site, the
622 Engineer shall have the right to suspend the work as described under
623 Subsection 108.10 – Suspension of Work.

624
625 The Contractor shall provide the Engineer a written statement
626 giving the name of the superintendents assigned to the project. The
627 Contractor shall be responsible for notifying the Engineer in writing of any
628 change in the superintendents in a timely manner.

629
630 **105.22 Submittals.** The contract contains the description of various items
631 that the Contractor must submit to the Engineer for review and acceptance.
632 The Contractor shall review all submittals for correctness, conformance with the
633 requirements of the contract documents and completeness before submitting
634 them to the Engineer. The submittal shall indicate the contract items and
635 specifications subsections for which the submittal is provided. The submittal
636 shall be legible and clearly indicate what portion of the submittal is being
637 submitted for review if more than the required submissions at the earliest
638 possible date. The Contractor shall provide six copies of the required
639 submissions at the earliest possible date.

640
641 Failure to furnish acceptable submittal(s) may result in the suspension of
642 payments due the Contractor.

643
644 The Contractor shall not add onto the submittals any conditions or
645 disclaimers that conflict with the contract requirements.”

646
647 **105.23 Storage and Handling of Materials and Equipment.**

648
649 **(A) Contractor’s Responsibility.** The Contractor as part of the
650 contract price shall provide all storage space. Materials shall be stored
651 and handled to preserve their quality and fitness for the work. The
652 Contractor shall locate stored materials so as to facilitate their prompt
653 inspection by the Engineer. No State land outside the project limits may
654 be used without authority granted by the State agency having jurisdiction
655 over the site. Prior to final inspection, the Contractor at no increase in

contract price or contract time shall restore all storage sites within the project limits to their pre-existing or to a different condition approved by the Engineer.

(B) Permit. Consistent with State law and subject to the application of the Contractor, the State shall issue a permit for storage of materials and equipment within the State highway right-of-way.

(C) Designated Storage Area. The Contractor may store materials and equipment only within the areas designated in the contract documents.

(D) No Designated Storage Area. If no storage area is designated within the contract documents, materials and equipment may be stored anywhere within the State highway right-of-way, provided such storage and access to and from such site, within the sole discretion of the Engineer, does not create a public or traffic hazard or an impediment to the movement of traffic .

No State land outside the project limits may be used without authority granted by the State agency having jurisdiction over the site. Prior to final inspection, the Contractor at no increase in contract price or contract time shall restore all storage sites within the project limits to their pre-existing or to a different condition approved by the Engineer.

(E) Contractor's Risk. The Contractor assumes all risk of loss or damage to the stored materials and equipment within the State highway right-of-way. Storage of materials and equipment within the highway right-of-way is an element of the Contractor's "performance" as referred to in Subsection 107.27 – Responsibility for Damage; Indemnity. The failure of the Engineer to deny the Contractor the opportunity to store materials and equipment at any particular location at any particular time shall not relieve the Contractor of the primary responsibility to avoid creating traffic and public safety hazards.

105.24 Examination of Contract Documents and Project Site. The Contractor shall examine carefully the project site to become familiar with the conditions to be encountered in performing the work and the requirements of the contract documents. The Contractor shall be charged with knowledge of all conditions at the site that may affect the work, including the storage of materials and equipment and access thereto, that would normally be discovered by a reasonable pre-bid site inspection.

When the contract drawings include a log of test borings showing a record of the data obtained by the State's investigation of subsurface conditions, said log represents only the finding of the State as to the character of material encountered in its test borings and only at the location of each boring.

Underground site conditions in Hawaii vary widely. Accordingly there is no warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work or any part of it, or that other conditions may not occur.

Subsurface investigations, reports, explorations, and tests utilized by the State in preparation of the contract documents are not part of the contract documents, whether or not they are made available for review and inspection by the Contractor.

105.25 Dimensions, Performance Standards and Other Values Required by the Contract. When work required by the contract is subject to contractually established tolerances, the Contractor's means and methods shall nevertheless be designed to meet the precise dimensions, performance standards and other values required by the contract. Contractor shall not intentionally attempt to provoke work that does not strictly meet the precise dimensions, performance standards and other values required by the contract."

END OF SECTION105