

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

ADDENDUM NO. 2

FOR

KAUMUALII HIGHWAY RESURFACING

LAWAI BRIDGE TO HALEWILI ROAD, KALAHEO

PROJECT NO. 50C-01-01M

DISTRICT OF KOLOA
ISLAND OF KAUAI

2003

Amend the Bid Documents as follows:

SPECIAL PROVISIONS:

Amend **Sub-Section 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.

(B) Orders and Directives. Any oral order, direction, instruction, interpretation or determination from the Engineer that is not a field order or change order, will be considered as a change only if the Contractor gives the Engineer an oral notice of its intent to treat such oral order, direction, instruction, interpretation or determination as a change directive before the Contractor acts in conformity with the oral order, direction, instruction, interpretation or determination but no later than twelve o'clock (12:00 PM) of the following working day. The oral notice shall be followed by a written notice that must be delivered to the Engineer within five days after delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, whether extra costs and a time extension will be requested, and source of the order that the Contractor regards as a

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change. 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 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 their 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 protest with the Engineer within 30 days after delivery to the Engineer of the Contractor's written notice of its intention to treat the order or directive as a change. Failure by the Contractor to submit a written notice in the time specified will be deemed as a waiver of 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 or directive.

(C) Field Orders. Upon receipt of the Field Order the Contractor shall proceed with the changes as ordered. 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 protest verbally to the Engineer before the Contractor acts in conformity with the Field Order, but no later than within 3 days after receipt of the Field Order and in writing within 5 days after receipt of the written Field Order. In the written protest the Contractor shall give all reasons in detail for its protest of the Field Order. Failure to file the written protest or to protest a portion(s) of the Field Order within 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. The requirement for timely written notice shall be a condition precedent to the assertion of a claim and will not be waived. The protest shall be determined as provided in Subsection 105.18 - Claims for Adjustment and Disputes. In all cases, the Contractor shall proceed with the work as changed by the Field Order.

(D) 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.

(E) 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"

(F) Differing Site Conditions. If the Contractor finds the following:

- (1) Subsurface or latent physical conditions that differ materially from that shown on the contract, or
- (2) other physical conditions that are unusual in nature and differ materially from that ordinarily encountered in the type of project under contract, or
- (3) other physical conditions that were not discoverable by the Contractor before commencement of the project or that portions of the project work, or
- (4) other physical conditions that are not generally recognized in the construction industry as inherent in the type of work specified in the project contract, the Contractor shall immediately notify the Engineer verbally of the above discovery. Within 24 hours, the Contractor shall inform the Engineer in writing of the above discovery. The affected work will stop immediately until the Engineer informs the Contractor to commence work in writing.

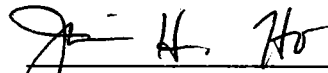
The Engineer will investigate, document and evaluate the site conditions found in the affected project area. The Engineer will determine and inform the Contractor if such conditions are materially different from the contract and if such conditions justify an adjustment to the project contract.

If an adjustment is warranted 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 such conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined according to Subsection 104.09 - Price Adjustment.

The Department will not compensate the Contractor for loss of anticipated profits on deleted work.

If the Contractor fails to notify the Engineer as provided above, or commences or continues project work in or affecting that portion of the project area before receiving written authorization from the Engineer, the Department may refuse or deny contract adjustments for that portion of the project work."

Please acknowledge receipt of this Addendum No. 2 by recording the date of its receipt in the space provided on Page P-4 of the Proposal.



for RODNEY K. HARAGA
Director of Transportation