

1 Amend **Section 106 – Control Of Material** to read as follows:  
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3 **“SECTION 106 - CONTROL OF MATERIAL**  
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5 **106.01 Source of Supply and Quality Requirements.** The Contractor shall  
6 furnish, pay for, and install all materials required to complete the work, except  
7 materials that are designated in the contract documents to be furnished by the  
8 State. Materials shall be in new condition as of the time of final acceptance  
9 subject to normal wear.  
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11 All materials proposed to be used may be inspected and tested at any  
12 time and place including but not limited to the source of supply and locations of  
13 manufacture and fabrication. When requested by the Engineer, the Contractor  
14 shall notify the Engineer of the Contractor's proposed sources of materials prior  
15 to delivery. At the request of the Engineer, the Contractor shall provide  
16 reasonable and adequate testing facilities and equipment for the Engineer at the  
17 inspection site, at no cost to the State.  
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19 **106.02 Material Sources.** With the written permission of and subject to  
20 conditions set by the Engineer, the Contractor may, at no cost to the State, use  
21 stone, gravel, sand, or other materials found within the project limits. Such  
22 permission will not be considered a change and may be revoked at any time for  
23 any reason by the Engineer at no cost to the State.  
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25 The contract documents or Engineer may make available to the  
26 Contractor the option to use material from sources made available by the State.  
27 Designation of a source for material is not a representation by the Engineer of  
28 the quantity or quality of material obtainable or the method, equipment or work  
29 required to obtain material from the source. The Contractor is not obligated to  
30 use material from such sources. The Contractor bears all costs of using such  
31 material and assumes the risk that such material does not conform to contract  
32 requirements.  
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34 **106.03 Material Sample; Sample Submittals; Notice of Change.**  
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36 **(A) Material Sample.** Submission of material and equipment samples  
37 required by the contract documents or by the Engineer are exclusively for  
38 the benefit of the State's quality control monitoring of the project. Any  
39 statement or representation by the Engineer that any submitted sample is  
40 "ACCEPTED", "APPROVED", or other words to similar effect, shall not  
41 be deemed conclusive that the material and equipment for which a  
42 sample was submitted will conform to the contract requirements when  
43 incorporated into the work. The "ACCEPTANCE" or "APPROVAL" of any  
44 sample by the Engineer does not change or modify any contract  
45 requirements.  
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47 The Engineer may require any or all materials to be tested or  
48 retested by means of samples or otherwise at any time. The Contractor  
49 shall collect and forward samples requested by the Engineer. In all  
50 cases, the Contractor shall furnish the required samples at no cost to the  
51 State. The Contractor shall not be entitled to payment for work that  
52 incorporates materials required to be tested or inspected until the  
53 Engineer completes the tests or inspections. Where samples are  
54 required from the completed work, the Contractor shall cut and furnish  
55 samples from the completed work at the sites and quantities designated  
56 by the Engineer. Samples so removed shall be replaced with material  
57 conforming to the contract requirements and refinished. No additional  
58 compensation will be allowed for the replacement of the sample with new  
59 material.  
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61 Tests of the material samples will be made in accordance with the  
62 latest standards of HDOT Hawaii Test Methods, AASHTO, ASTM, or  
63 other recognized material organization specified in the contract  
64 documents as amended prior to the date of advertisement unless  
65 otherwise provided. References to HDOT Hawaii Test Method means  
66 "Hawaii Test Methods", published by the State of Hawaii, Department of  
67 Transportation, Highways Division, Materials Testing and Research  
68 Branch. The Engineer shall decide the tests and standards to be applied,  
69 whether a submitted material sample passes the tests and/or meets the  
70 standards, and whether a submitted material sample shall be retested.  
71

72 Each sample submitted shall have a label indicating project title  
73 and number, the material represented, its place of origin, the names of  
74 the producers and suppliers, the Contractor, and the portion of the work  
75 for which the material is intended. Samples shall be marked to indicate  
76 where the materials represented are required by the contract documents.  
77

78 A letter in duplicate shall accompany each delivery of samples and  
79 shall contain a list of the samples and the same information required on  
80 the labels accompanying each sample.  
81

82 **(B) Sample Submittals.**  
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84 **(1) Contractor's Duty.** When sample submittals are required  
85 by the contract documents, the Contractor shall review, approve,  
86 indicate its approval and submit to the Engineer samples of the  
87 materials for the review process. It is the responsibility of the  
88 Contractor to submit required material and color samples for review  
89 at the earliest possible date after the date of award. Delays  
90 caused by the failure of the Contractor to submit material and color  
91 samples will not be considered as justifiable reasons for contract  
92 time extension or additional compensation.

93 (2) **Deviations.** The Contractor shall include with the submittal  
94 of samples written notification of, and shall clearly identify, all  
95 deviations from the contract documents. Failure to so notify the  
96 Engineer of, and identify, such deviations shall be grounds for the  
97 subsequent rejection of the related work or materials,  
98 notwithstanding that the sample upon its submittal was accepted by  
99 the Engineer. Any deviations will be subject to Subsection 102.16  
100 – Substitution of Materials and Equipment. If the deviations are  
101 not acceptable to the Engineer, the Contractor shall be required to  
102 furnish the samples as specified or indicated on the contract  
103 documents at no additional cost or time.  
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105 (3) **Review Process.** The Engineer will inspect or test samples  
106 and communicate the results of the inspection or test within 45  
107 days of receipt unless otherwise agreed between the Contractor  
108 and the Engineer or as stated in the contract documents. If the  
109 volumes of samples submitted at any time for review is unusually  
110 large, the Contractor may inform the Engineer of its preferred  
111 order for review and the Engineer will use reasonable efforts to  
112 accommodate the Contractor's priorities.  
113

114 If the Engineer notifies the Contractor that a sample does  
115 not conform to the contract documents, the Contractor shall  
116 promptly submit a sample conforming to the requirements of the  
117 contract documents, indicating in writing on the transmittal and the  
118 subject sample what portions of the resubmittal have been altered.  
119

120 No mark or notation made by the Engineer on or  
121 accompanying the return of any sample to the Contractor shall be  
122 considered a request or order for a change or extra work. If the  
123 Contractor believes any such mark or notation constitutes a  
124 request for a change or extra work for which it is entitled to an  
125 adjustment in contract price and/or time, the Contractor must  
126 follow the procedures established in Subsection 104.02 – Changes  
127 for oral orders, directions, instructions, interpretations, or  
128 determinations from the Engineer or else lose its right to claim for  
129 an adjustment.  
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131 (C) **Notice of Change.** If during the course of the work the Contractor  
132 intends to change the source of supply of any previously submitted  
133 material, or the location of any manufacturing or fabrication plant, the  
134 Contractor shall provide the Engineer written notice of such intended  
135 change not less than ten days before the change is made.  
136

137 **106.04 Plant Inspection.** (Unassigned). (See 105.11 – Inspection of the  
138 Work and Materials).

139 **106.05 Storage and Handling of Materials.** The Contractor as part of the  
140 contract price shall provide all storage space. Materials shall be stored and  
141 handled to preserve their quality and fitness for the work. Stored materials shall  
142 be located so as to facilitate their prompt inspection by the Engineer. Unless  
143 otherwise provided by the contract documents or by separate written agreement  
144 with the State, no site within the project limits may be used for storage purposes  
145 or for the placing of the Contractor's plant and equipment. Prior to final  
146 inspection, the Contractor at no additional cost to the State shall restore all  
147 storage sites within the project limits to their pre-existing or similar condition.

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149 **106.06 Handling Materials.** (Unassigned). (See 106.05 – Storage and  
150 Handling of Materials).

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152 **106.07 Non-Conforming Materials.** All materials not conforming to the  
153 contract requirements, whether in place or not, shall be promptly removed from  
154 the site of the work when directed by the Engineer in writing. If the Contractor  
155 fails to comply forthwith with any order of the Engineer made under the  
156 provisions of this subsection, the Engineer shall have the authority to remove  
157 and replace non-conforming materials and charge the removal and replacement  
158 to the Contractor.

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160 **106.08 State-Furnished Material.** The Contractor shall furnish all materials  
161 required to complete the work, except those specified to be furnished by the  
162 State. The contract documents or the Engineer will establish the time and  
163 means of delivery or the turning over of State-furnished materials.

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165 Unless otherwise stated in the contract documents, it shall be  
166 conclusively presumed that State-furnished materials conform to the contract  
167 documents as of the time of delivery to the Contractor

168  
169 Upon receipt, the Contractor shall inventory, store, inspect, protect,  
170 distribute, and install State-furnished material at its risk and cost."

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172 **106.09 Special Test Methods.** (Unassigned). (See 106.03 (A)- Material  
173 Sample).

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175 **106.10 Certificate of Compliance.** In addition to or instead of the  
176 submission of material samples or equipment for inspection or testing, the  
177 Engineer or the contract documents may require the Contractor to submit to the  
178 Engineer a Certificate of Compliance from the manufacturer and/or supplier.

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180 A Certificate of Compliance shall be an English language document  
181 containing:

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183 (1) A description of the material supplied.  
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- 185 (2) Means of material identification, including but not limited to label,  
186 lot number, heat number, batches, or marking including the respective  
187 quantities of each supplied for the work.  
188
- 189 (3) Statement that the material complies in all respects with the  
190 requirements of the cited specifications within the contract documents.  
191
- 192 (4) When required by the Engineer, test results confirming that the  
193 material complies in all respect with the requirements of the contract  
194 documents.  
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- 196 (5) The name, title, and signature of the authorized person acting on  
197 behalf of the manufacturer or the supplier of the material, the date of the  
198 signature, and the name and address of the manufacturer or supplier of  
199 the material.  
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201 **106.11 Steel and Iron Construction Material.** The major quantities of steel  
202 and iron construction material that is permanently incorporated into the project  
203 shall consist of American-made materials only.  
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205 The Contractor may utilize minor amounts of foreign steel and iron in this  
206 project provided the cost of the foreign material used does not exceed one-tenth  
207 of one percent of the total contract cost or \$2,500.00, whichever is greater.  
208

209 American-made material is defined as material having all manufacturing  
210 processes occur in the United States. The action of applying a coating to steel  
211 or iron is deemed a manufacturing process. Coating includes epoxy coating,  
212 galvanizing, aluminizing, painting, and any other coating that protects or  
213 enhances the value of steel or iron. Any process from the original reduction  
214 from ore to the finished product constitutes a manufacturing process for iron.  
215 The following are considered to be steel manufacturing processes.  
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- 217 (1) Production of steel by any of the following processes:  
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- 219 (a) Open hearth furnace.
  - 220
  - 221 (b) Basic oxygen.
  - 222
  - 223 (c) Electric furnace.
  - 224
  - 225 (d) Direct reduction.
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- 227 (2) Rolling, heat treating, and any other similar processing.  
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- 229 (3) Fabrication of the products.

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- (a) Spinning wire into cable or strand.
- (b) Corrugating and rolling into culverts.
- (c) Shop fabrication.

A certification of materials origin will be required for any items comprised of, or containing steel or iron construction materials prior to such items being incorporated into the permanent work.

**106.12 Recycling of Waste Glass.** (Unassigned). (See 717 - Cullet and Cullet-Made Materials).

**106.13 Payment for Deleted Materials.**

**(A) Canceled Orders.** If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the Engineer, the Contractor shall use its best efforts in a timely manner to cancel the order. The State will pay reasonable cancellation charges required by the supplier. The Contractor will be paid an additional 7 percent markup on all reasonable cancellation charges for compensation for overhead and profit.

**(B) Returned Materials.** If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, if such material is returnable to the supplier and the Engineer so directs, the material shall be returned. After the Contractor returns acceptable material to the supplier, the State will pay for the reasonable charges made by the supplier or other source for the return of the material. The Contractor shall be paid a markup for overhead and profit on charges made by the supplier. The Contractor shall be paid a 7 percent markup on the reasonable charges made by the supplier or other source for returning the material for compensation for overhead and profit. The cost to the Contractor for handling the returned material will be paid as provided in Subsection 104.06 - Methods of Price Adjustment.

**(C) Uncanceled Material.** If orders for acceptable material that was deleted cannot be canceled at a reasonable cost or returned, it will be paid for at the actual cost to the Contractor including a markup for overhead and profit of 7 percent. In such cases the material paid for shall become the property of the State and the cost of further storage and handling will be paid as provided in Subsection 104.06 - Methods of Price Adjustment.

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All charges the Contractor proposes for the acceptable material that was deleted shall be properly itemized and supported by sufficient substantiating legible data to permit evaluation. The Engineer will determine whether the proposal is acceptable.

**106.14 Assignment Of Antitrust Claims For Overcharges For Goods and Materials Purchased.** Vendor and purchaser recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, vendor hereby assigns to purchaser any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and which are not passed on to the purchaser under an escalation clause.

Contractor and owner recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the owner. Therefore, Contractor hereby assigns to owner any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and any contract change order. In addition, Contractor warrants and represents that each of its first tier suppliers and subcontractors shall assign any and all such claims to owner, subject to the aforementioned exception.

**106.15 Unauthorized Excavation.** Unless otherwise expressly directed or authorized by the contract documents, Contractor shall not excavate beyond the excavation limits for the purpose of obtaining materials. The site disturbed by unauthorized excavation shall be returned to the condition existing before such unauthorized excavation at no cost to the State. Any unauthorized excavation shall be filled, at the direction of the Engineer, with either the material taken out or a substitute material selected by the Engineer."

**END OF SECTION**