

1 Amend **Section 106 – Control Of Material** to read as follows:

2
3 **"SECTION 106 - CONTROL OF MATERIAL**

4
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.

10
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.

18
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.

24
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.

33
34 **106.03 Material Sample; Sample Submittals; Notice of Change.**

35
36 **(A) Material Sample.** Submission of material and equipment
37 samples required by the contract documents or by the Engineer are
38 exclusively for the benefit of the State's quality control monitoring of the
39 project. Any statement or representation by the Engineer that any
40 submitted sample is "ACCEPTED", "APPROVED", or other words to
41 similar effect, shall not be deemed conclusive that the material and
42 equipment for which a sample was submitted will conform to the contract
43 requirements when incorporated into the work. The "ACCEPTANCE" or
44 "APPROVAL" of any sample by the Engineer does not change or modify
45 any contract requirements.
46

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 cases,
50 the Contractor shall furnish the required samples at no cost to the State.
51 The Contractor shall not be entitled to payment for work that incorporates
52 materials required to be tested or inspected until the Engineer completes
53 the tests or inspections. Where samples are required from the completed
54 work, the Contractor shall cut and furnish samples from the completed
55 work at the sites and quantities designated by the Engineer. Samples so
56 removed shall be replaced with material conforming to the contract
57 requirements and refinished. No additional compensation will be allowed
58 for the replacement of the sample with new material.
59

60 Tests of the material samples will be made in accordance with the
61 latest standards of HDOT Hawaii Test Methods, AASHTO, ASTM, or
62 other recognized material organization specified in the contract
63 documents as amended prior to the date of advertisement unless
64 otherwise provided. References to HDOT Hawaii Test Method means
65 "Hawaii Test Methods", published by the State of Hawaii, Department of
66 Transportation, Highways Division, Materials Testing and Research
67 Branch. The Engineer shall decide the tests and standards to be
68 applied, whether a submitted material sample passes the tests and/or
69 meets the standards, and whether a submitted material sample shall be
70 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.**

83
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 to be used in the work. 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
100 102.16 – Substitution of Materials and Equipment. If the deviations
101 are not acceptable to the Engineer, the Contractor shall be
102 required to furnish the samples as specified or indicated on the
103 contract documents at no additional cost or time.
104

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.
130

131 (C) **Notice of Change.** If during the course of the work the
132 Contractor intends to change the source of supply of any previously
133 submitted material, or the location of any manufacturing or fabrication
134 plant, the Contractor shall provide the Engineer written notice of such
135 intended change not less than ten days before the change is made.
136

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

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
142 shall be located so as to facilitate their prompt inspection by the Engineer.
143 Unless otherwise provided by the contract documents or by separate written
144 agreement with the State, no site within the project limits may be used for
145 storage purposes or for the placing of the Contractor's plant and equipment.
146 Prior to final inspection, the Contractor at no additional cost to the State shall
147 restore all storage sites within the project limits to their pre-existing or similar
148 condition.

149
150 **106.06 (Unassigned).** (See 106.05 – Storage and Handling of Materials).
151

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.
159

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.
164

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."
171

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

174 **106.10 Certificate of Compliance.** In addition to or instead of the
175 submission of material samples or equipment for inspection or testing, the
176 Engineer or the contract documents may require the Contractor to submit to the
177 Engineer a Certificate of Compliance from the manufacturer and/or supplier.
178

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

- 182 (1) A description of the material supplied.
183

184 (2) Means of material identification, including but not limited to label,
185 lot number, heat number, batches, or marking including the respective
186 quantities of each supplied for the work.

187
188 (3) Statement that the material complies in all respects with the
189 requirements of the cited specifications within the contract documents.

190
191 (4) When required by the Engineer, test results confirming that the
192 material complies in all respect with the requirements of the contract
193 documents.

194
195 (5) The name, title, and signature of the authorized person acting on
196 behalf of the manufacturer or the supplier of the material, the date of the
197 signature, and the name and address of the manufacturer or supplier of
198 the material.

199
200 **106.11 Steel and Iron Construction Material.** The major quantities of steel
201 and iron construction material that is permanently incorporated into the project
202 shall consist of American-made materials only.

203
204 The Contractor may utilize minor amounts of foreign steel and iron in this
205 project provided the cost of the foreign material used does not exceed one-tenth
206 of one percent of the total contract cost or \$2,500.00, whichever is greater.

207
208 American-made material is defined as material having all manufacturing
209 processes occur in the United States. The action of applying a coating to steel
210 or iron is deemed a manufacturing process. Coating includes epoxy coating,
211 galvanizing, aluminizing, painting, and any other coating that protects or
212 enhances the value of steel or iron. Any process from the original reduction
213 from ore to the finished product constitutes a manufacturing process for iron.
214 The following are considered to be steel manufacturing processes.

215
216 (1) Production of steel by any of the following processes:

217
218 (a) Open hearth furnace.

219
220 (b) Basic oxygen.

221
222 (c) Electric furnace.

223
224 (d) Direct reduction.

225
226 (2) Rolling, heat treating, and any other similar processing.

227
228 (3) Fabrication of the products.

230 (a) Spinning wire into cable or strand.

231
232 (b) Corrugating and rolling into culverts.

233
234 (c) Shop fabrication.

235
236 A certification of materials origin will be required for any items comprised
237 of, or containing steel or iron construction materials prior to such items being
238 incorporated into the permanent work.

239
240 **106.12 Recycling of Waste Glass.** (Unassigned). See 717 - Cullet and
241 Cullet-Made Materials).

242
243 **106.13 Payment for Deleted Materials.**

244
245 **(A) Canceled Orders.** If acceptable material was ordered by the
246 Contractor for any item deleted by an ordered change in the work prior to
247 the date of notification of such deletion by the Engineer, the Contractor
248 shall use its best efforts in a timely manner to cancel the order. The
249 State will pay reasonable cancellation charges required by the supplier.
250 The Contractor will be paid an additional 7 percent markup on all
251 reasonable cancellation charges for compensation for overhead and
252 profit.

253
254 **(B) Returned Materials.** If acceptable deleted material is in the
255 possession of the Contractor or is ultimately received by the Contractor, if
256 such material is returnable to the supplier and the Engineer so directs, the
257 material shall be returned. After the Contractor returns acceptable
258 material to the supplier, the State will pay for the reasonable charges
259 made by the supplier or other source for the return of the material. The
260 Contractor shall be paid a markup for overhead and profit on charges
261 made by the supplier. The Contractor shall be paid a 7 percent markup
262 on the reasonable charges made by the supplier or other source for
263 returning the material for compensation for overhead and profit. The
264 cost to the Contractor for handling the returned material will be paid as
265 provided in Subsection 104.06 - Methods of Price Adjustment.

266
267 **(C) Uncancelled Material.** If orders for acceptable material that was
268 deleted cannot be canceled at a reasonable cost or returned, it will be
269 paid for at the actual cost to the Contractor including a markup for
270 overhead and profit of 7 percent. In such cases the material paid for
271 shall become the property of the State and the cost of further storage and
272 handling will be paid as provided in Subsection 104.06 - Methods of Price
273 Adjustment.

274
275 All charges the Contractor proposes for the acceptable material
276 that was deleted shall be properly itemized and supported by sufficient

277 substantiating legible data to permit evaluation. The Engineer will
278 determine whether the proposal is acceptable.
279

280 **106.14 Assignment Of Antitrust Claims For Overcharges For Goods and**
281 **Materials Purchased.**

282 Vendor and purchaser recognize that in actual
283 economic practice, overcharges resulting from antitrust violations are in fact
284 usually borne by the purchaser. Therefore, vendor hereby assigns to
285 purchaser any and all claims for such overcharges as to goods and materials
286 purchased in connection with this order or contract, except as to overcharges
287 which result from antitrust violations commencing after the price is established
288 under this order or contract and which are not passed on to the purchaser under
289 an escalation clause.

290 Contractor and owner recognize that in actual economic practice,
291 overcharges resulting from antitrust violations are in fact usually borne by the
292 owner. Therefore, Contractor hereby assigns to owner any and all claims for
293 such overcharges as to goods and materials purchased in connection with this
294 order or contract, except as to overcharges which result from antitrust violations
295 commencing after the price is established under this order or contract and any
296 contract change order. In addition, Contractor warrants and represents that
297 each of its first tier suppliers and subcontractors shall assign any and all such
298 claims to owner, subject to the aforementioned exception."
299

300 **106.15 Unauthorized Excavation.** Unless otherwise expressly directed or
301 authorized by the contract documents, Contractor shall not excavate beyond the
302 excavation limits for the purpose of obtaining materials. The site disturbed by
303 unauthorized excavation shall be returned to the condition existing before such
304 unauthorized excavation at no cost to the State. Any unauthorized excavation
305 shall be filled, at the direction of the Engineer, with either the material taken out
306 or a substitute material selected by the Engineer."
307
308

309 **END OF SECTION 106**
310