

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

**"SECTION 106 - CONTROL OF MATERIAL**

**"106.01 Source of Supply and Quality Requirements.** The Contractor shall furnish, pay for, and install all materials required to complete the work, except materials that are designated in the contract documents to be furnished by the State.. Materials shall be in new condition as of the time of final acceptance subject to normal wear.

All materials proposed to be used may be inspected and tested at any time and place including but not limited to the source of supply and locations of manufacture and fabrication. When requested by the Engineer, the Contractor shall notify the Engineer of the Contractor's proposed sources of materials prior to delivery. At the request of the Engineer, the Contractor shall provide reasonable and adequate testing facilities and equipment for the Engineer at the inspection site, at no cost to the State.

**106.02 Material Sources.** With the written permission of and subject to conditions set by the Engineer, the Contractor may, at no cost to the State, use stone, gravel, sand, or other materials found within the project limits. Such permission will not be considered a change and may be revoked at any time for any reason by the Engineer at no cost to the State.

The contract documents or Engineer may make available to the Contractor the option to use material from sources made available by the State. Designation of a source for material is not a representation by the Engineer of the quantity or quality of material obtainable or the method, equipment or work required to obtain material from the source. The Contractor is not obligated to use material from such sources. The Contractor bears all costs of using such material and assumes the risk that such material does not conform to contract requirements.

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

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

The Engineer may require any or all materials to be tested or retested by means of samples or otherwise at any time. The Contractor shall collect and forward samples requested by the Engineer. In all cases, the Contractor shall furnish the required samples at no cost to the State. The Contractor shall not be entitled to payment for work that incorporates materials required to be tested or inspected until the Engineer completes the tests or inspections. Where samples are required from the completed work, the Contractor shall cut and furnish samples from the completed work at the sites and quantities designated by the Engineer. Samples so removed shall be replaced with material conforming to the contract requirements and refinished. No additional compensation will be allowed for the replacement of the sample with new material.

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

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

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

**(B) Sample Submittals.**

**(1) Contractor's Duty.** When sample submittals are required by the contract documents, the Contractor shall review, approve, indicate its approval and submit to the Engineer samples of the materials to be used in the work. It is the responsibility of the Contractor to submit required material and color samples for review at the earliest possible date after the date of award. Delays caused by the failure of the Contractor to submit material and color

samples will not be considered as justifiable reasons for contract time extension or additional compensation.

**(2) Deviations.** The Contractor shall include with the submittal of samples written notification of, and shall clearly identify, all deviations from the contract documents. Failure to so notify the Engineer of, and identify, such deviations shall be grounds for the subsequent rejection of the related work or materials, notwithstanding that the sample upon its submittal was accepted by the Engineer. Any deviations will be subject to Subsection 102.16 – Substitution of Materials and Equipment. If the deviations are not acceptable to the Engineer, the Contractor shall be required to furnish the samples as specified or indicated on the contract documents at no additional cost or time.

**(3) Review Process.** The Engineer will inspect or test samples and communicate the results of the inspection or test within 45 days of receipt unless otherwise agreed between the Contractor and the Engineer or as stated in the contract documents. If the volumes of samples submitted at any time for review is unusually large, the Contractor may inform the Engineer of its preferred order for review and the Engineer will use reasonable efforts to accommodate the Contractor's priorities.

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

No mark or notation made by the Engineer on or accompanying the return of any sample to the Contractor shall be considered a request or order for a change or extra work. If the Contractor believes any such mark or notation constitutes a request for a change or extra work for which it is entitled to an adjustment in contract price and/or time, the Contractor must follow the procedures established in Subsection 104.02 – Changes for oral orders, directions, instructions, interpretations, or determinations from the Engineer or else lose its right to claim for an adjustment.

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

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

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

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

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

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

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

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

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

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

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

- (1) A description of the material supplied.
- (2) Means of material identification, including but not limited to label, lot number, heat number, batches, or marking including the respective quantities of each supplied for the work.
- (3) Statement that the material complies in all respects with the requirements of the cited specifications within the contract documents.
- (4) When required by the Engineer, test results confirming that the material complies in all respect with the requirements of the contract documents.
- (5) The name, title, and signature of the authorized person acting on behalf of the manufacturer or the supplier of the material, the date of the signature, and the name and address of the manufacturer or supplier of the material.

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

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

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

- (1) Production of steel by any of the following processes:
  - (a) Open hearth furnace.
  - (b) Basic oxygen.
  - (c) Electric furnace.
  - (d) Direct reduction.

- (2) Rolling, heat treating, and any other similar processing.
- (3) Fabrication of the products.
  - (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 Ordering of Certain Materials.** (Unassigned) (Contractor required to complete within the specified time including ordering of material. No need to check if the Contractor ordered material.)

**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**