

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

Make the following amendments to said Section:

(I) Amend 107.01 **Laws to be Observed** to read as follows:

"107.01 Laws to be Observed; Indemnity. The Contractor at all times shall observe and comply with all Federal, State, and local laws, ordinances, rules, regulations, and permit and license requirements which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall comply with all orders and decrees of government bodies or officials having any jurisdiction or authority over the work whether such orders or decrees are directed to the Contractor, its subcontractors, vendors, and suppliers, or to the State.

No instruction in the contract documents or contained within any directive from the Engineer to the Contractor to observe and comply with any specific law, ordinance, rule, regulation or permit or license requirement shall limit the duty of the Contractor to observe and comply with all other laws, ordinances, rules, regulations or permit or license requirement that relate to the work.

The Contractor shall immediately notify the Engineer in writing of any orders, directives, notices, decrees, or warnings issued by any governmental agency to the Contractor, its subcontractors, vendors, and suppliers that a violation of law, rules, regulations, or permit or license requirement is alleged to have occurred or is occurring in connection with the work.

The Contractor shall defend, protect, hold harmless, compensate, and indemnify the State, its officers and employees, against any claim or liability arising from or based on the violation of any laws, ordinances, rules and regulations, orders or decrees, or the terms and conditions of any permits and licenses, whether such orders or decrees are directed to the Contractor, its subcontractors, vendors, and suppliers or to the State."

(II) Amend 107.02 **Wages and Hours Requirements** as follows:

Amend the first paragraph to read as follows:

"107.02 Wages and Hours Requirements. The Contractor shall at all times observe and comply with all provisions of Chapter 104, HRS, which are emphasized in Attachment I entitled 'Requirements of Chapter 104, HRS Wages and Hours of Employees On Public Work Law', appended hereto and which require, in part, the following:"

Amend (A) **Hours of Labor** by revising the first paragraph to read as follows:

"(A) Hours of Labor. No work shall be done over 8 hours in any one day, Saturdays, Sundays, or legal holidays of the State without written consent of the Engineer. If the Engineer gives consent, workers shall receive compensation at a rate of not less than one and a half times the worker's basic hourly rate if the worker works:

- (1) over 8 hours in one day;
- (2) over 40 hours in one week; or
- (3) on Saturdays, Sundays or legal State holidays

plus the cost of fringe benefits according to wage rate schedules issued by the Director of Labor and Industrial Relations."

Amend (B) Rate of Wages to read as follows:

"(B) Rate of Wages. The Contractor shall pay:

- (1) no less than the prevailing wages, and
- (2) no less than the increases to the prevailing wages

to the various classes of laborers and mechanics as published in the wage rate bulletins determined by the Director of the Department of Labor and Industrial Relations (DLIR) for the entire term of the contract.

For bidding purposes, the wage rate schedule established by DLIR five calendar days before the date of bid opening shall be applicable.

Said wage rate schedule may be obtained from the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813. The Department will include the current State wage rate schedule physically in the contract documents executed by the successful bidder.

DLIR have established minimum wage rate schedules for workers. Do not pay the workers less than the wages set forth on the applicable schedules.

Consider flaggers who perform traffic safety duties and no actual construction work on this contract as laborers or mechanics.

Post the schedule of prevailing rates of minimum wages applicable to the work in a prominent and easily accessible place at the project site.

Give to each worker employed under the contract a copy of that rates of wages required to be posted at the time of employment.

(III) Delete **107.04 Citizen Labor** in its entirety.

(IV) Amend **107.07 Contractor's Licensing Laws** by revising the third paragraph to read as follows:

"If a Contractor's license is required by law for the performance of the work which is called for in this bid, the bidder and all subcontractors must have the required license before the submission of the bidder's proposal in the case of a non-federal-aid project, and for federal-aid projects, the bidder must have the required license prior to the award of the project and all subcontractors prior to the start of the subcontracted work."

(V) Amend **107.08 Permits, Licenses, And Taxes** to read as follows:

"107.08 Permits and Licenses. As part of the contract price, the Contractor shall obtain all permits and licenses required by law to perform the work and pay charges, fees, and taxes incidental to obtaining such permits and licenses. The Contractor assumes exclusive responsibility for identifying and acquiring all permits and licenses necessary to perform the work, except for those permits and licenses identified in the contract documents as being the responsibility of the State.

The terms and conditions of any permit or license required for performance of the work, whether or not issued in the name of the Contractor, are incorporated into the contract. Compliance with such terms and conditions are duties owed by the Contractor to the State under the contract. Notwithstanding the enforcement authority of the permitting or licensing agency, whether or not a State agency, non-compliance by the Contractor with any term or condition of such license or permit shall be deemed non-compliance with the contract and may constitute grounds for default.

The Engineer may grant time and/or cost adjustment to the extent the Engineer determines that the Contractor was not a contributing factor for such delay."

(VI) Delete **107.11 Federal Aid Provisions** in its entirety.

(VII) Amend **107.12 Sanitary, Health, And Safety Provisions** to read as follows:

"107.12 Safety: Accident Prevention.

(1) The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the Engineer may determine, to be reasonably necessary to protect the life and health of employees and other persons on and around the worksite and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

(2) The Contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards promulgated by the Federal, State, and local authorities.

(3) Authorized Federal, State, and local officials shall have right of entry to any site of contract performance to inspect, investigate, and enforce the matter of compliance with the construction safety and health standards referred to herein."

(VIII) Amend 107.13 Public Convenience and Safety to read as follows:

"107.13 Contractor Duty Regarding Public Convenience. The Contractor shall at all times conduct the work in such manner and in such sequence as will insure the least practicable interference with pedestrian, bicycle, and motor passageways. The Contractor shall plan and provide appropriate detours, signs, flashers, personnel, warnings, barricades and other devices for safely and legally handling pedestrian, bicycle, and motor traffic."

(IX) Delete 107.14 Barricades and Warning Signs in its entirety.

(X) Amend 107.15 Use of Explosives or Combustibles to read as follows:

"107.15 Use of Explosives. The use of explosives will not be permitted."

(XI) Amend 107.16 Protection and Restoration of Property and Landscaping to read as follows:

"107.16 Protection of Persons and Property.

(A) Contractor's Responsibility for Damage to Property. All damage, injury or loss to any property caused during the course of, or arising out of the work, whether or not caused by negligent acts or omissions, shall be the responsibility of the Contractor and shall be remedied promptly by the Contractor. This provision shall not affect the Contractor's legal rights of subrogation, contribution, and indemnity to

recover the costs of remedial measures and other damages to which it may be entitled.

(B) Safety Precautions and Programs. The Contractor shall notify owners of adjacent properties and of underground (or overhead) utilities when performing work which may affect the owners; and shall cooperate with the owners in the protection, removal and replacement of their property.

The Contractor shall not permit any load to be placed on the work, any structure, or roadway or any other location that may endanger the safety of any persons or cause damage to any property. The Contractor shall not injure or destroy trees or shrubs nor remove or cut them without permission of the Engineer. Contractor shall protect all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

In the event the Contractor encounters on the site material reasonably believed to be asbestos or other hazard material that has not been rendered harmless, the Contractor shall stop work in the area and notify the Engineer promptly. The work in the affected area shall be resumed in the absence of hazard materials or when the hazard has been rendered harmless.

(C) Notification to the Engineer. The Contractor shall notify the Engineer in writing not later than noon of the following working day whenever:

- (1) Police, fire or other public safety officers are called to the work site for any reason or are present at the work site for any public safety related reason.
- (2) Any person is treated or evacuated from the work site by emergency medical services personnel.
- (3) Any member of the public claims to have been injured at the work site.
- (4) The Contractor witnesses a member of the public being involved in an accident at the worksite, or on account of conditions related to the work, whether or not visible injuries occur.
- (5) Any representative of a Federal, State, or County regulatory or enforcement agency is present at the work site including but not limited to any representative of Department of Health, EPA, OSHA, and public works."

(XI) Amend 107.17 Protection of Rivers, Streams, Impoundments, Forests and Archeological, Historical, and Burial Site Findings to read as follows:

"107.17 Pollution Control and Protection Of Archeological, Historical, and Burial Sites.

(A) Erosion, Siltation and Pollution Control. The Contractor shall exercise precaution to prevent silting and pollution of oceans, rivers, streams, lakes, and reservoirs and other bodies and conveyances of water.

The Contractor shall provide for pollution and erosion control during the work including periods of suspension of contract performance. If material begins to erode into a body of water or water conveyance, the Contractor shall act immediately to bring the siltation, erosion, and pollution under control.

(B) Archaeological, Historical, and Burial Sites. Whenever the Contractor encounters sites of potentially historic or archaeological significance such as walls, platforms, pavements and mounds, or remains such as artifacts, burials, concentration of charcoal or shells, work shall cease in the immediate vicinity of the site and the site shall be protected from damage. The Contractor shall suspend any work that may affect the site and inform the Engineer immediately. Upon direction by the Engineer, the Contractor shall provide and install temporary fencing to protect such sites. The Contractor shall not resume the work suspended without the prior written direction of and subject to the conditions set by the Engineer."

(XII) Amend 107.21 Contractor's Responsibility for Utility Property and Services to read as follows:

"107.21 Utilities and Services.

(A) Contractor's Duty to Coordinate Utility Work. The Contractor shall contact and cooperate with each affected utility owner in order for the work to progress on schedule and without unreasonable disruption of such utility services. If the work calls for permanent utility service installation and/or corrections and modifications to existing utilities, the Contractor is responsible for scheduling and coordinating such work with appropriate utility owners. If the work required by the contract documents conflicts with the instructions, demands, or requirements of a utility owner, the Contractor shall notify the Engineer immediately. The Contractor shall furnish the Engineer with evidence that the Contractor

has provided all relevant utility owners reasonable opportunity to review the drawings.

When the State has a separate agreement with a utility owners for work to be performed within the worksite, at the direction of the Engineer the Contractor shall make available all portions of the work and the worksite necessary for the utility owners to do their work.

The Contractor hereby holds the State harmless against all risks arising from acts or omissions of utility owners that damage the work, or create delays, disruptions, and additional cost to the Contractor in the performance of the work. Contract time Time for the work may be extended in accordance with Subsection 108.06 - Contract Time on account of acts and omissions of utility owners that delay the work without fault of the Contractor.

The Contractor may relocate or adjust the utility lines or service connections for its convenience with the permission of the owner of the utility and the Engineer at no cost to the State.

(B) Contractor's Duty to Locate and Protect Utility. Before beginning any work at the worksite, the Contractor shall:

- (1) Ascertain and mark the exact location and depth of all utilities within the project area including taking reasonable steps to detect the existence and location of utilities not shown on the drawing.
- (2) Acquaint all personnel working near utilities with the type, size, location, and depth of the utilities, as well as the consequences that might result from disturbances.
- (3) Take reasonable steps to protect the utilities and prevent service disruption.

(C) Discovery of Unknown Utility; Damage to Utility. Upon discovery of a utility that was not shown to exist in the contract documents, or is found at a location that is substantially different than shown in the contract documents, the Contractor shall promptly notify the Engineer before the utility and its surrounding area are further disturbed. The Contractor shall be responsible for the safety and protection of the public and the utility subject to further direction from the Engineer. Whenever the Contractor damages a utility or causes any interruption to any utility service, the Contractor shall promptly notify the Engineer, the affected utility owner, and the appropriate governmental authorities. The Contractor shall cooperate with the affected utility owner, and the

appropriate governmental authorities in the restoration of service. If the damage is to a known utility, the Contractor shall be responsible for all costs associated with its repair and restoration of service, at no cost to the State."

(XIV) Add the following:

"107.25 Contaminated and/or Hazardous Item and/or Material; Regulated Items and Material; Waste.

(A) Known or Suspected Contaminated an/or Hazardous Items and/or Material. If the contract documents have noted an area of known or suspected contaminated and/or hazardous items and/or material within the project limits, in the absence of specific orders from the Engineer or directions in the contract documents, the Contractor shall report the discovery of such items and/or material to the appropriate governmental agencies, cooperate with all investigations and either remediate or remove and dispose of such contaminated and/or hazardous items and/or material as part of the contract price unless otherwise noted in the contract documents. Upon encountering any such contaminated and/or hazardous condition, the Contractor shall immediately notify the Engineer.

(B) Unknown Contaminated and/or Hazardous Items and/or Material. If the Contractor encounters or exposes any items, material or other conditions within the worksite not previously known or suspected to be contaminated or hazardous, but which exhibits properties which may indicate the presence of hazardous or contaminated items and/or material, the Contractor shall immediately notify the Engineer. Claims by the Contractor for additional money or time arising from work involving such items, material or other conditions, including the cost and time associated with notifying and providing written reports to government agencies listed below, shall be subject to the terms and conditions of Subsection 104.08 – Differing Site Conditions.

(C) Contractor's Duty to Report. Whenever the Contractor encounters or exposes any hazardous or contaminated items, material or conditions at the worksite whether the existence of which was previously known, suspected, or unknown, the Contractor shall notify the State Department of Health/HEER office, the Federal Environmental Protection agency, the U.S. Coast Guard, the National Response Center, and other appropriate government agencies, and comply with any directives or instructions provided by them.

(D) Material and Waste Brought to the Worksite. The Contractor shall assume sole responsibility for

(1) The management of all regulated materials and items brought to the worksite; and

(2) The management of all waste generated by or incidental to the Contractor's operations, including but not limited to lubricants, antifreeze, engine fluids, paints, and solvents.

Management of such materials and items includes, but is not limited to, their transport, storage, handling, and disposal.

(E) Reimbursement of State Expenses. In addition to all other remedies provided by law or contract, the State may withhold from or recover from the Contractor any money it is required to expend to remediate, remove, or dispose of any such items and material, as well as the cost of any fines or impositions made by appropriate enforcement agencies arising from the management of such items and material, whether or not the Contractor exercised due care."

107.26 Assignment or Change of Name.

(A) General. The Contractor shall not sell, transfer, assign, or otherwise dispose of this contract or any part hereof or any right, title, or interest herein without the written consent of the Engineer.

The Contractor may assign money due or to become due under the contract and such assignment will be recognized by the State, if given written notice thereof, to the extent permitted by law. Any assignment of monies shall be subject to all set-offs in favor of the State and to all deductions provided for in the contract including but not limited to liquidated or actual damages for delay and money retained by the State for the completion of the work in the event that the Contractors should be in default.

(B) Recognition of a Successor in Interest; Assignment. When in the best interest of the State, a successor in interest may be recognized in an assignment agreement in which the Contractor and the transferee and the State shall agree that:

(1) The transferee assumes all of the Contractor's obligation;

(2) The Contractor remains liable for all obligations under the contract but waives all rights under the contract against the State; and

(3) The Contractor shall continue to furnish, and the transferee shall also furnish, all required bonds.

(C) **Change of Name.** When a Contractor requests to change the name in which it holds a contract with the State, the Engineer shall, upon receipt of a document indicating such change of name (for example; an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

107.27 Responsibility For Damage Claims; Indemnity. The Contractor shall compensate and make whole the State for all loss or damage to the State's property and facilities arising out of any act or omission in the performance of the work by the Contractor, any subcontractor, or their employees and agents.

The Contractor shall defend, hold harmless, compensate, and indemnify the State, its employees and officers, against all losses, demands, claims, liabilities, suits, actions, causes of action, judgments, costs and expenses including attorneys' fees, and damages, arising out of injury to or death of any person (including employees of the State, the Contractor or any subcontractor), loss or damage to any property resulting from or in connection with performance of the work unless and until it is determined by a court of competent jurisdiction to have been caused solely by the negligence of the State.

The State may participate in the defense of any claim or suit brought against its officers or employees, without relieving the Contractor of any obligation hereunder. The purchase of liability insurance shall not relieve the Contractor of the obligations described herein. If the Contractor and its insurer fail to undertake the defense of the State, its employees and officers, after a tender of defense has been duly made, the State may retain and withhold money to cover the Contractor's obligation whether or not the Contractor is terminated for cause.

The Contractor shall pay all just claims for materials, supplies, tools, labor and other just claims against the Contractor or any subcontractor in connection with this contract, and the surety bond will not be released by final acceptance and payment by the State unless all such claims are paid or released. The State may, but is not obligated to, withhold or retain as much of the monies due or to become due the Contractor under this contract considered necessary by the Engineer to cover such just claims until satisfactory proof of payment or the establishment of an acceptable payment plan."

107.28 Right to Audit Records, Records Maintenance, Retention and Access. Pursuant to Section 103D-317 HRS the State, at reasonable times and places, may audit the books and records of a Contractor, prospective contractor, subcontractor and prospective subcontractor relating to the Contractor's or subcontractor's cost or pricing data. Any such audits may be conducted by Federal and State employees or by consultants working on behalf of the State. The Contractor and subcontractor(s) shall maintain the books and records for a period of four years from the date of final payment under the contract.

The Contractor and its subcontractors shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers, and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the Contractor and subcontractor's performance of work under this contract.

The representative of the State, the Comptroller of the State of Hawaii, the Attorney General, (the Federal granting agency, the Comptroller General of the United States, and any if their authorized representatives when federal funds are utilized), and the Legislative Auditor of the State of Hawaii shall have the right of access to any book, document, paper, file, or other record of the Contractor and any subcontractor that is related to the performance of work under this Agreement in order to conduct an audit or other examination and/or make copies, excerpts and transcripts for the purposes of monitoring and evaluating the Contractor and subcontractor's performance of work and the Contractor and subcontractor's program, management, and fiscal practices to assure the proper and effective expenditure of funds and to verify all costs associated with any claims made under this contract.

The Contractor shall provide full cooperation during all such audits and shall insure that its subcontractors comply with this requirement. The Contractor shall bear all costs (including attorney's fees) of enforcement in the event of or its subcontractor's failure or refusal to fully cooperate.

The right of access shall not be limited to the required retention period but shall last as long as records are retained. The Contractor and subcontractor shall retain all records related to the Contractor and subcontractor's performance of work under this Agreement for four years from the date of final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four year period, the Contractor and subcontractors shall retain and resolution of all issues that arise from it, or until the end of the four year retention period, whichever occurs later.

END OF SECTION