

1       **SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

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3       Make the following amendments to said Section:

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5       **(I) Amend Section 107.01 Insurance Requirements** from lines 5 to 81 to  
6       read as follows:

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8       **“(A) Obligation of Contractor.** Contractor shall not commence any  
9       work until it obtains, at its own expense, all required insurance described  
10      herein. Such insurance shall be provided by an insurance company  
11      authorized by the laws of the State to issue such insurance in the State of  
12      Hawaii. Coverage by a “Non-Admitted” carrier is permissible provided the  
13      carrier has a Best’s Rating of “A-VII” or better. The Contractor shall  
14      maintain and ensure all insurance policies are current for the full period of  
15      the contract until final acceptance of the work by the State.  
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17       The Certificate of Insurance shall contain: a clause that it is agreed  
18      that any insurance maintained by the State of Hawaii will apply in excess  
19      of, and not contribute with, insurance provided by this policy; and shall be  
20      accompanied by endorsement form CG2010 or equivalent naming the  
21      State as an additional insured to the policy which status shall be  
22      maintained for the full period of the contract until final acceptance of the  
23      work by State.  
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25       The Contractor shall obtain all required insurance as part of the  
26      contract price. Where there is a requirement for the State of Hawaii and  
27      its officers and employees to be named as additional insureds under any  
28      Contractor’s insurance policy, before the State of Hawaii issues the Notice  
29      to Proceed, the Contractor shall obtain and submit to the Engineer a  
30      Certificate of Insurance and a written policy endorsement that confirms the  
31      State of Hawaii and its officers and employees are additional insureds for  
32      the specific State project number and project title under such insurance  
33      policies. The written policy endorsement must be issued by the insurance  
34      company insuring the Contractor for the specified policy type or by an  
35      agent of such insurance company who is vested with the authority to issue  
36      a written policy endorsement. The insurer’s agent shall also submit  
37      written confirmation of such authority to bind the insurer. Any delays in  
38      the issuance of the Notice to Proceed attributed to the failure to obtain the  
39      proof of the State of Hawaii and its officers and employees’ additional  
40      insured status shall be charged to the Contractor.  
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42       A mere Certificate of Insurance issued by a broker who represents  
43      the Contractor (but not the Contractor’s insurer), or by any other party who  
44      is not authorized to contractually name the State as an additional insured  
45      under the Contractor’s insurance policy, is not sufficient to meet the  
46      Contractor’s insurance obligations.

Certificates shall contain a provision that coverages being certified will not be cancelled or materially changed without giving the Engineer at least thirty (30) days prior written notice. Contractor will immediately provide written notice to the Director should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, reduced in scope or coverage, or not renewed upon expiration. Should any policy be canceled before final acceptance of the work by the State, and the Contractor fails to immediately procure replacement insurance as specified, the State, in addition to all other remedies it may have for such breach, reserves the right to procure such insurance and deduct the cost thereof from any money due or to become due to the Contractor.

Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from its operations under this contract, including the Contractor's obligation to pay liquidated damages, nor shall it affect the Contractor's separate and independent duty to defend, indemnify and hold the State harmless pursuant to other provisions of this contract. In no instance will the State's exercise of an option to occupy and use completed portions of the work relieve the Contractor of its obligation to maintain the required insurance until the date of final acceptance of the work.

All insurance described herein shall be primary and cover the insured for all work to be performed under the contract, all work performed incidental thereto or directly or indirectly connected therewith, including but not limited to traffic detour work, barricades, warnings, diversions, lane closures, and other work performed outside the work area and all change order work.

The Contractor shall, from time to time, furnish the Engineer, when requested, satisfactory proof of coverage of each type of insurance required covering the work. Failure to comply with the Engineer's request may result in suspension of the work, and shall be sufficient grounds to withhold future payments due the Contractor and to terminate the contract for Contractor's default.

**(B) Types of Insurance.** Contractor shall purchase and maintain insurance described below which shall provide coverage against claims arising out of the Contractor's operations under the contract, whether such operations be by the Contractor itself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

**(1) Workers' Compensation.** The Contractor shall obtain worker's compensation insurance for all persons whom they

93 employ in carrying out the work under this contract. This insurance  
94 shall be in strict conformity with the requirements of the most  
95 current and applicable State of Hawaii Worker's Compensation  
96 Insurance laws in effect on the date of the execution of this contract  
97 and as modified during the duration of the contract.  
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99 **(2) Auto Liability.** The Contractor shall obtain Auto Liability  
100 Insurance covering all owned, non-owned and hired autos with a  
101 Combined single Limit of not less than \$1,000,000 per occurrence  
102 for bodily injury and property damage with the State of Hawaii  
103 named as additional insured. Refer to SPECIAL CONDITIONS for  
104 any additional requirements.  
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106 **(3) General Liability.** The Contractor shall obtain General  
107 Liability insurance with a limit of not less than \$2,000,000 per  
108 occurrence and in the Aggregates for each of the following:  
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110 (a) Products - Completed/Operations Aggregate,

111 (b) Personal & Advertising Injury, and  
112

113 (c) Bodily Injury & Property Damage  
114  
115

116 The General Liability insurance shall include the State as an  
117 Additional Insured. The required limit of insurance may be provided  
118 by a single policy or with a combination of primary and excess  
119 policies. Refer to SPECIAL CONDITIONS for any additional  
120 requirements.  
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122 **(4) Builders Risk For All Work.** The Contractor shall take out  
123 a policy of builder's risk insurance for the full replacement value of  
124 the project work from a company licensed or otherwise authorized  
125 to do business in the State of Hawaii; naming the State as an  
126 additional insured under each policy; and covering all work, labor,  
127 and materials furnished by such Contractor and all its  
128 subcontractors against loss by fire, windstorm, tsunamis,  
129 earthquakes, lightning, explosion, other perils covered by the  
130 standard Extended Coverage Endorsement, vandalism, and  
131 malicious mischief. Refer to SPECIAL CONDITIONS for any  
132 additional requirements."  
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134 **(II) Amend Section 107.03 Working Hours; Night Work** by adding the  
135 following after line 142.  
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137 "Perform night work only as follows:  
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139 Sunday thru Thursday nights, from 9:00 P.M. to 12:00 midnight

Monday thru Friday mornings, from 12:00 midnight to 5:00 A.M.

The Engineer has secured a Noise Variance from the Department of Health according to Administrative Rules Title 11, Chapter 11-46, Section 11-46-8 for this work.”

(III) Add **Section 107.18 Citizen and Residential Labor Force** and **Section 107.19 Avoidance and Minimization Measures for Endangered Species** after line 745 to read as follows:

**“107.18 Citizen and Residential Labor Force.**

**(A) Citizen Labor.** No person shall be employed as a laborer or mechanic unless such person is a citizen of the United States or eligible to become one; provided that persons without such qualifications may be employed with the approval of the Governor until persons who are citizens and are competent for such services are available for hire.

**(B) Residential Labor Force.** In accordance with Act 192; SLH 2011, no less than eighty (80) percent of the bidder's labor force working on the contract shall be provided by Hawaii residents. This act applies to all construction procurements under HRS Chapter 103D; however this act does not apply to procurements for professional services under Section 103D-304 and small purchases under Section 103D-305. This act is also applicable to any subcontract of \$50,000.00 or more in connection with this contract.

Resident means a person who is physically present in the State of Hawaii at the time the person claims to have established the person's domicile in the State of Hawaii and shows the person's intent is to make Hawaii the person's primary residence.

**(C)** Percentage of workforce shall be determined by dividing the labor hours (including subcontractors) provided by residents working on the project divided by the total number of hours worked by all employees of the contractor in the performance of the contract. Hours worked by employees within shortage trades as determined by the Department of Labor and Industrial Relations shall not be included in the calculation of this percentage.

**(D)** Certification of compliance with the forgoing provisions shall be made by the contractor in the form of a written oath submitted to the Procurement Officer on a monthly basis for the duration of the contract.

**(E)** Sanctions for non compliance with these provisions are as follows:

186 (1) With respect to the General Contractor, withholding of  
187 payment on the contract until the Contractor or its Subcontractor  
188 complies with HRS Chapter 103B as amended by Act 192, SLH  
189 2011.

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191 (2) Proceedings for debarment or suspension of the Contractor  
192 or Subcontractor under Hawaii Revised Statutes § 103D-702.

193  
194 This Section shall not apply when its application will disqualify the State  
195 from receiving federal funds or aid.

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197 **"107.19 – Avoidance and Minimization Measures for Endangered Species**

198  
199 (A) No nighttime construction will be permitted between September  
200 15th through December 15th, during the seabird fledging period.

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202 (B) From December 16th to September 14th, nighttime construction is  
203 permitted with all lighting shielded and directed toward the ground to avoid  
204 attracting adult seabirds as they travel from the ocean to their breeding  
205 areas.

206  
207 (C) From June 1<sup>st</sup> to September 15<sup>th</sup>, trees and shrubs taller than 15  
208 feet will not be trimmed or cleared to avoid impacts to the Hawaiian Hoary  
209 Bat."

210  
211 **END OF SECTION 107**