

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

2
3 Make the following amendments to said Section:

4
5 **(I) Amend Section 107.01 Insurance Requirements** from lines 5 to 81 to
6 read as follows:

7
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.

16
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.

24
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.

41
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.

47 Certificates shall contain a provision that coverages being certified
48 will not be cancelled or materially changed without giving the Engineer at
49 least thirty (30) days prior written notice. Contractor will immediately
50 provide written notice to the Director should any of the insurance policies
51 evidenced on its Certificate of Insurance form be cancelled, reduced in
52 scope or coverage, or not renewed upon expiration. Should any policy be
53 canceled before final acceptance of the work by the State, and the
54 Contractor fails to immediately procure replacement insurance as
55 specified, the State, in addition to all other remedies it may have for such
56 breach, reserves the right to procure such insurance and deduct the cost
57 thereof from any money due or to become due to the Contractor.
58

59 Nothing contained in these insurance requirements is to be
60 construed as limiting the extent of Contractor's responsibility for payment
61 of damages resulting from its operations under this contract, including the
62 Contractor's obligation to pay liquidated damages, nor shall it affect the
63 Contractor's separate and independent duty to defend, indemnify and hold
64 the State harmless pursuant to other provisions of this contract. In no
65 instance will the State's exercise of an option to occupy and use
66 completed portions of the work relieve the Contractor of its obligation to
67 maintain the required insurance until the date of final acceptance of the
68 work.
69

70 All insurance described herein shall be primary and cover the
71 insured for all work to be performed under the contract, all work performed
72 incidental thereto or directly or indirectly connected therewith, including
73 but not limited to traffic detour work, barricades, warnings, diversions, lane
74 closures, and other work performed outside the work area and all change
75 order work.
76

77 The Contractor shall, from time to time, furnish the Engineer, when
78 requested, satisfactory proof of coverage of each type of insurance
79 required covering the work. Failure to comply with the Engineer's request
80 may result in suspension of the work, and shall be sufficient grounds to
81 withhold future payments due the Contractor and to terminate the contract
82 for Contractor's default.
83

84 **(B) Types of Insurance.** Contractor shall purchase and maintain
85 insurance described below which shall provide coverage against claims
86 arising out of the Contractor's operations under the contract, whether such
87 operations be by the Contractor itself or by any subcontractor or by
88 anyone directly or indirectly employed by any of them or by anyone for
89 whose acts any of them may be liable.
90

91 **(1) Workers' Compensation.** The Contractor shall obtain
92 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.
98

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.
105

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:
109

110 (a) Products - Completed/Operations Aggregate,
111

112 (b) Personal & Advertising Injury, and
113

114 (c) Bodily Injury & Property Damage
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.
121

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."
133

134 **(II) Amend Section 107.03 Working Hours; Night Work** by adding the
135 following after line 142.
136

137 "Perform night work only as follows:
138

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. Please see attached "DOH Decision and Order.pdf" and DOT Application for Community Noise Variance.pdf."

(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
187 (1) With respect to the General Contractor, withholding of
188 payment on the contract until the Contractor or its Subcontractor
189 complies with HRS Chapter 103B as amended by Act 192, SLH
190 2011.

191
192 (2) Proceedings for debarment or suspension of the Contractor
193 or Subcontractor under Hawaii Revised Statutes § 103D-702.
194

195 This Section shall not apply when its application will disqualify the State
196 from receiving federal funds or aid.
197

198 **107.19 – Avoidance and Minimization Measures for Endangered Species**
199

200 (A) No nighttime construction will be permitted between September
201 15th through December 15th, during the seabird fledging period.
202

203 (B) From December 16th to September 14th, nighttime construction is
204 permitted with all lighting shielded and directed toward the ground to avoid
205 attracting adult seabirds as they travel from the ocean to their breeding
206 areas.
207

208 (C) From June 1st to September 15th, trees and shrubs taller than 15
209 feet will not be trimmed or cleared to avoid impacts to the Hawaiian Hoary
210 Bat.”
211

212 **END OF SECTION 107**