

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

2
3 Make the following amendments to said Section:

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

8
9 **“(A) Obligation of Contractor.** Contractor shall not commence any
10 work until it obtains, at its own expense, all required insurance described
11 herein. Such insurance shall be provided by an insurance company
12 authorized by the laws of the State to issue such insurance in the State of
13 Hawaii. Coverage by a “Non-Admitted” carrier is permissible provided the
14 carrier has a Best’s Rating of “A-VII” or better. The Contractor shall
15 maintain and ensure all insurance policies are current for the full period of
16 the contract until final acceptance of the work by the State.

17
18 The Certificate of Insurance shall contain: a clause that it is agreed
19 that any insurance maintained by the State of Hawaii will apply in excess
20 of, and not contribute with, insurance provided by this policy; and shall be
21 accompanied by endorsement form CG2010 or equivalent naming the
22 State as an additional insured to the policy which status shall be
23 maintained for the full period of the contract until final acceptance of the
24 work by State.

25
26 The Contractor shall obtain all required insurance as part of the
27 contract price. Where there is a requirement for the State of Hawaii and
28 its officers and employees to be named as additional insureds under any
29 Contractor’s insurance policy, before the State of Hawaii issues the Notice
30 to Proceed, the Contractor shall obtain and submit to the Engineer a
31 Certificate of Insurance and a written policy endorsement that confirms the
32 State of Hawaii and its officers and employees are additional insureds for
33 the specific State project number and project title under such insurance
34 policies. The written policy endorsement must be issued by the insurance
35 company insuring the Contractor for the specified policy type or by an
36 agent of such insurance company who is vested with the authority to issue
37 a written policy endorsement. The insurer’s agent shall also submit
38 written confirmation of such authority to bind the insurer. Any delays in
39 the issuance of the Notice to Proceed attributed to the failure to obtain the
40 proof of the State of Hawaii and its officers and employees’ additional
41 insured status shall be charged to the Contractor.

43
44 A mere Certificate of Insurance issued by a broker who represents
45 the Contractor (but not the Contractor's insurer), or by any other party who
46 is not authorized to contractually name the State as an additional insured
47 under the Contractor's insurance policy, is not sufficient to meet the
48 Contractor's insurance obligations.
49

50 Certificates shall contain a provision that coverages being certified
51 will not be cancelled or materially changed without giving the Engineer at
52 least thirty (30) days prior written notice. Contractor will immediately
53 provide written notice to the Director should any of the insurance policies
54 evidenced on its Certificate of Insurance form be cancelled, reduced in
55 scope or coverage, or not renewed upon expiration. Should any policy be
56 canceled before final acceptance of the work by the State, and the
57 Contractor fails to immediately procure replacement insurance as
58 specified, the State, in addition to all other remedies it may have for such
59 breach, reserves the right to procure such insurance and deduct the cost
60 thereof from any money due or to become due to the Contractor.
61

62 Nothing contained in these insurance requirements is to be
63 construed as limiting the extent of Contractor's responsibility for payment
64 of damages resulting from its operations under this contract, including the
65 Contractor's obligation to pay liquidated damages, nor shall it affect the
66 Contractor's separate and independent duty to defend, indemnify and hold
67 the State harmless pursuant to other provisions of this contract. In no
68 instance will the State's exercise of an option to occupy and use
69 completed portions of the work relieve the Contractor of its obligation to
70 maintain the required insurance until the date of final acceptance of the
71 work.
72

73 All insurance described herein shall be primary and cover the
74 insured for all work to be performed under the contract, all work performed
75 incidental thereto or directly or indirectly connected therewith, including
76 but not limited to traffic detour work, barricades, warnings, diversions, lane
77 closures, and other work performed outside the work area and all change
78 order work.
79

80 The Contractor shall, from time to time, furnish the Engineer, when
81 requested, satisfactory proof of coverage of each type of insurance
82 required covering the work. Failure to comply with the Engineer's request
83 may result in suspension of the work, and shall be sufficient grounds to
84 withhold future payments due the Contractor and to terminate the contract
85 for Contractor's default.
86

87 **(B) Types of Insurance.** Contractor shall purchase and
88 maintain insurance described below which shall provide coverage

89 against claims arising out of the Contractor's operations under the
90 contract, whether such operations be by the Contractor itself or by any
91 subcontractor or by anyone directly or indirectly employed by any of
92 them or by anyone for whose acts any of them may be liable.
93

94 **(1) Workers' Compensation.** The Contractor shall obtain
95 worker's compensation insurance for all persons whom they
96 employ in carrying out the work under this contract. This insurance
97 shall be in strict conformity with the requirements of the most
98 current and applicable State of Hawaii Worker's Compensation
99 Insurance laws in effect on the date of the execution of this contract
100 and as modified during the duration of the contract.
101

102 **(2) Auto Liability.** The Contractor shall obtain Auto Liability
103 Insurance covering all owned, non-owned and hired autos with a
104 Combined single Limit of not less than \$1,000,000 per occurrence
105 for bodily injury and property damage with the State of Hawaii
106 named as additional insured. Refer to SPECIAL CONDITIONS for
107 any additional requirements.
108

109 **(3) General Liability.** The Contractor shall obtain General
110 Liability insurance with a limit of not less than \$2,000,000 per
111 occurrence and in the Aggregates for each of the following:
112

- 113 **(a)** Products - Completed/Operations Aggregate,
- 114
- 115 **(b)** Personal & Advertising Injury, and
- 116
- 117 **(c)** Bodily Injury & Property Damage
118

119 The General Liability insurance shall include the State as an
120 Additional Insured. The required limit of insurance may be provided
121 by a single policy or with a combination of primary and excess
122 policies. Refer to SPECIAL CONDITIONS for any additional
123 requirements.
124

125 **(4) Builders Risk For All Work.** The Contractor shall take out
126 a policy of builder's risk insurance for the full replacement value of
127 the project work; from a company licensed or otherwise authorized
128 to do business in the State of Hawaii; naming the State as an
129 additional insured under each policy; and covering all work, labor,
130 and materials furnished by such Contractor and all its
131 subcontractors against loss by fire, windstorm, tsunamis,
132 earthquakes, lightning, explosion, other perils covered by the
133 standard Extended Coverage Endorsement, vandalism, and

malicious mischief. Refer to SPECIAL CONDITIONS for any additional requirements.”

(II) Amend **107.03 – Working Hours; Night Work** by adding the following after line 142.

“Perform night work only as follows:

Sunday thru Thursday nights, from 8:00 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** 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:

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

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

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

END OF SECTION 107