

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

2
3 Make the following amendments to said Section:

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

8
9 **“(A) Obligation of Contractor.** Contractor shall not commence any work
10 until it obtains, at its own expense, all required insurance described herein.
11 Such insurance shall be provided by an insurance company authorized by
12 the laws of the State to issue such insurance in the State of Hawaii.
13 Coverage by a “Non-Admitted” carrier is permissible provided the carrier
14 has a Best’s Rating of “A-VII” or better. The Contractor shall maintain and
15 ensure all insurance policies are current for the full period of the contract
16 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 State
22 as an additional insured to the policy which status shall be maintained for
23 the full period of the contract until final acceptance of the 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 its
27 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 agent
35 of such insurance company who is vested with the authority to issue a written
36 policy endorsement. The insurer’s agent shall also submit written
37 confirmation of such authority to bind the insurer. Any delays in the
38 issuance of the Notice to Proceed attributed to the failure to obtain the proof
39 of the State of Hawaii and its officers and employees’ additional insured
40 status shall be charged to the Contractor.

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

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

70
71 All insurance described herein shall be primary and cover the insured
72 for all work to be performed under the contract, all work performed incidental
73 thereto or directly or indirectly connected therewith, including but not
74 limited to traffic detour work, barricades, warnings, diversions, lane closures,
75 and other work performed outside the work area and all change 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 employ
93 in carrying out the work under this contract. This insurance shall be
94 in strict conformity with the requirements of the most current and
95 applicable State of Hawaii Worker's Compensation Insurance laws
96 in effect on the date of the execution of this contract and as modified
97 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 named
103 as additional insured. Refer to SPECIAL CONDITIONS for any
104 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 a
123 policy of builder's risk insurance for the full replacement value of the
124 project work; from a company licensed or otherwise authorized to do
125 business in the State of Hawaii; naming the State as an additional
126 insured under each policy; and covering all work, labor, and materials
127 furnished by such Contractor and all its subcontractors against loss
128 by fire, windstorm, tsunamis, earthquakes, lightning, explosion, other
129 perils covered by the standard Extended Coverage Endorsement,
130 vandalism, and malicious mischief. Refer to SPECIAL CONDITIONS
131 for any additional requirements."

132 **(II)** Add **Section 107.18 Citizen and Residential Labor Force** after line 745
133 to read as follows:

134
135 **"107.18 Citizen and Residential Labor Force.**
136

137 **(A) Citizen Labor.** No person shall be employed as a laborer or
138 mechanic unless such person is a citizen of the United States or eligible to
139 become one; provided that persons without such qualifications may be
140 employed with the approval of the Governor until persons who are citizens
141 and are competent for such services are available for hire.
142

143 **(B) Residential Labor Force.** In accordance with Act 192; SLH 2011,
144 no less than eighty (80) percent of the bidder's labor force working on the
145 contract shall be provided by Hawaii residents. This act applies to all
146 construction procurements under HRS Chapter 103D; however this act
147 does not apply to procurements for professional services under Section
148 103D-304 and small purchases under Section 103D-305. This act is also
149 applicable to any subcontract of \$50,000.00 or more in connection with this
150 contract.
151

152 Resident means a person who is physically present in the State of
153 Hawaii at the time the person claims to have established the person's
154 domicile in the State of Hawaii and shows the person's intent is to make
155 Hawaii the person's primary residence.
156

157 **(C)** Percentage of workforce shall be determined by dividing the labor
158 hours (including subcontractors) provided by residents working on the
159 project divided by the total number of hours worked by all employees of the
160 contractor in the performance of the contract. Hours worked by employees
161 within shortage trades as determined by the Department of Labor and
162 Industrial Relations shall not be included in the calculation of this
163 percentage.
164

165 **(D)** Certification of compliance with the forgoing provisions shall be
166 made by the contractor in the form of a written oath submitted to the
167 Procurement Officer on a monthly basis for the duration of the contract.
168

169 **(E)** Sanctions for non compliance with these provisions are as follows:
170

171 **(1)** With respect to the General Contractor, withholding of
172 payment on the contract until the Contractor or its Subcontractor
173 complies with HRS Chapter 103B as amended by Act 192, SLH
174 2011.
175

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

178
179 This Section shall not apply when its application will disqualify the State
180 from receiving federal funds or aid.”

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183
184
185

END OF SECTION 107