

1 **SECTION 105 - CONTROL OF WORK**

2
3 Make the following amendments to said Section:

4
5 **(I) Amend 105.01 Authority of the Engineer** to read as follows:

6
7 **"105.01 Authority.**

8
9 **(A) Authority of the Engineer.** The Engineer is the
10 representative of the Director and has all the authority of the
11 Director with respect to the contract. The Engineer will make
12 decisions on all questions that may arise regarding the contract,
13 such as, but not limited to:

14
15 **(1)** Interpretation of the contract documents;

16
17 **(2)** Acceptability of the materials furnished and work performed;

18
19 **(3)** Manner of performance and rate of progress of the work;

20
21 **(4)** Acceptable fulfillment of the contract on the part of the
22 Contractor;

23
24 **(5)** Compensation under the contract.

25
26 The Engineer's decisions on questions, claims, and disputes will
27 be final and conclusive subject to Subsection 105.18 – Disputes and
28 Claims.

29
30 The Engineer may delegate specific authority to act for the
31 Engineer to a specific person or persons. Such delegation of authority
32 shall be established in writing and shall become effective upon delivery to
33 the Contractor.

34
35 **(B) Authority of the Resident Engineer.** As the representative of
36 the Engineer, the Resident Engineer has all the authority of the Engineer
37 in matters involving the work.

38
39 **(C) Authority of the Inspectors.** Inspectors, as a representative of
40 the Resident Engineer or other agencies, will inspect the work done and
41 materials furnished. Such inspection may extend to the preparation,
42 fabrication or manufacture of the materials to be used. The Inspector
43 does not have authority vested in the Resident Engineer unless
44 specifically delegated in writing. The Inspector may not alter or waive the
45 provisions of the contract, issue instructions contrary to the contract, or
46 act as agent or representative of the Contractor.
47

48 Failure of an Inspector at any time to reject non-conforming work
49 shall not be considered a waiver of the State's right to require work in
50 strict conformity with the contract documents as a condition of final
51 acceptance.

52
53 **(D) Authority of the Consultant.** The State may engage Consultants
54 to perform duties in connection with the work. Unless otherwise specified
55 in writing to the Contractor, such retained Consultants shall have no
56 greater authority than an Inspector."

57
58 **(II) Amend 105.02 Contract Plans and Working and Shop Drawings to**
59 **read as follows:**

60
61 **"105.02 Shop Drawings.**

62
63 **((A) Shop Drawing Requirements.** The Contractor shall prepare,
64 thoroughly check, approve, and submit all shop drawings to the Engineer
65 for review. Whenever possible, electronic files in MS Word, MS Excel
66 and Microstation format shall be submitted with the hard copies. The
67 Contractor shall indicate its approval by stamping and signing each
68 submittal of shop drawing. Any shop drawing submitted without being
69 reviewed, stamped and signed will be returned as an incomplete
70 submittal, and any delay caused thereby shall be the Contractor's
71 responsibility.

72
73 All drawings, which require an engineering stamp, shall be
74 stamped by professional engineers licensed in the State of Hawaii.
75 Shop drawings shall indicate in detail all parts of an item of work,
76 including erection and setting instructions and engagements with work of
77 other trades or other separate contractors. Shop drawings for structural
78 steel, millwork, pre-cast concrete and falsework, formwork or centering
79 with heights of 40 feet or more or open spans of 20 feet or more shall
80 consist of calculations, fabrication details, erection drawings and other
81 shop drawings, as necessary, to show the details, dimensions, sizes of
82 members, anchor bolt plans, insert locations and other information
83 necessary for the complete fabrication and erection of the structure to be
84 constructed. Shop drawings shall also include stress sheets, drawings,
85 bending diagrams for reinforcing steel, and plans for erection, falsework,
86 framework, cofferdam, and other items or such other similar data
87 required for the successful completion of the work.

88
89 All shop drawings as required by the contract, or as determined by
90 the Engineer to be necessary to illustrate details of the work shall be
91 submitted to the Engineer with such promptness as to cause no delay in
92 the work or the work of any other Contractor. Delay caused by the failure
93 of the Contractor to submit shop drawings on a timely basis to allow for
94 review, possible resubmittal and acceptance will not be considered as a

justifiable reason for a contract time extension. Contractor, at its own risk, may proceed with the work affected by the shop drawings after they are submitted but before receiving acceptance. The State shall not be liable for any increase in contract price or contract time required for the correction of work done without the benefit of accepted shop drawings.

The Contractor shall not make changes to the accepted shop drawings without submitting a written request to the Engineer and reviewing a written acceptance of the change by the Engineer.

By approving and submitting shop drawings, the Contractor thereby represents that it has determined and verified all field measurements and field construction criteria, or will do so, and that it has checked and coordinated each shop drawing with the requirements of the work and the contract documents. When shop drawings are prepared and processed before field measurements and field construction criteria can be or have been determined or verified, the Contractor shall make all necessary adjustments in the work or resubmit further shop drawings, all at no increase in contract price or contract time.

The shop drawing submitted must be accompanied by a transmittal giving a list of the titles and numbers of the drawings. Each series shall be numbered consecutively for ready reference and the submittal shall be marked with enough information to identify itself, including date, project name and number, name of the submitting Contractor or subcontractor, revision number, and revision box which gives date of the revision and what the revisions changed.

The size of the sheets that shop drawings are prepared on shall be as appropriate to suit the drawing being presented so that the information is clearly and legibly depicted. The Engineer will determine what size is appropriate.

When required by the contract, the Contractor shall submit to the Engineer descriptive sheets such as brochures, catalogs and illustrations, which will completely describe the material, product, equipment, furniture or appliances to be used in the project as shown in the drawings and specifications and indicate such conformity by marking, or stamping and signing each sheet.

(B) Submittal for Deviations and Variances. The Contractor shall include with the submittal, written notification clearly identifying and summarizing all deviations or variances from the contract drawings, specifications and other contract documents. The variances shall also be clearly indicated on the shop drawing, descriptive sheet, and material sample or color sample. Failure to so notify of and identify such variance shall be grounds for rejection of the related work or materials,

notwithstanding that the Engineer accepted the submittal. If the variances are not acceptable to the Engineer, the Contractor will be required to furnish the item as specified or indicated on the contract documents at no increase in contract price or contract time."

(III) Delete **105.03** **Conformity with the Contract** in its entirety and replace it with the following:

"105.03 Review and Acceptance Process. The Engineer will complete the review of the submittal within 30 days from the date of receipt unless a different review time is established by the contract documents. The Engineer will advise the Contractor, in writing, as to the acceptability of the submittal. Should the Engineer partially or totally reject the submittal, the Contractor shall modify the submittal as required by the Engineer and resubmit the item within 15 days. At this time, the review and acceptance cycle described above shall begin again. The review and acceptance cycle shall begin again as described above each time the submittal is returned to the Contractor for modification. If the volume of the shop drawings submitted at any time for review is unusually large, the Contractor shall inform the Engineer of its preferred order for reviews, and the Engineer will use reasonable efforts to accommodate the Contractor's priority.

The acceptance by the Engineer of the Contractor's submittal relates only to their sufficiency and compliance with the intention of the contract. Acceptance by the Engineer of the Contractor's submittal does not relieve the Contractor of any responsibility for accuracy of dimensions, details, and proper fit, and for agreement and conformity of submittal with the contract drawings and specifications. Nor will the Engineer's acceptance relieve the Contractor of responsibility for variance from the contract documents unless the Contractor, at the time of submittal, has provided notice and identification of such variances required by this section. Acceptance of a variance shall not justify a contract price or time adjustment unless the contractor requests such adjustment at the time of submittal and the adjustment is explicitly agreed to in writing by the Engineer. Any such request shall include price details and proposed scheduling modifications. Acceptance of a variance is subject to all contract terms, stipulations and covenants, and is without prejudice to any and all rights under the surety bond.

If the Engineer returns a submittal to the Contractor that has been rejected, the Contractor, so as not to delay the work, shall promptly make a resubmittal conforming to the requirements of the contract documents and indicating in writing on the transmittal and the subject submittal what portions of the resubmittal have been altered in order to meet the acceptance of the Engineer. Any other differences between the resubmittal and the prior submittal shall also be specifically described in the transmittal.

No mark or notation made by the Engineer on or accompanying the return of any submittal to the Contractor shall be considered a request or order for a

change in work. If the Contractor believes any such mark or notation constitutes a request for a change in the work for which it is entitled to an adjustment in contract price or contract time, or both, the Contractor must follow the procedures established in Subsection 104.02 – Changes or lose its right to claim for an adjustment.

(IV) Amend 105.04 Furnishing and Coordination of the Contract to read as follows:

"105.04 Interpretations of the Contract Documents; Drawings.

((A) Interpretations of the Contract Documents; Conflicts and Ambiguity. The contract documents are complimentary. Any requirement occurring in one document is as binding as though occurring in all. A stricter requirement prevails over any less strict requirement. The stricter requirement will be the requirement that provides the greater product life, durability, strength and function.

The Contractor shall carefully study and compare the contract documents with each other, with field conditions and with the information furnished by the State and shall immediately report to the Engineer errors, conflicts, ambiguities, inconsistencies, or omissions discovered. Should an item not be sufficiently detailed or explained in the contract documents, the Contractor shall report to the Engineer immediately and request the Engineer's clarification and interpretation. The Engineer will issue a clarification or interpretation that is consistent with the intent of and reasonably inferred from the contract documents.

(B) Priority Within Drawings.

(1) Numerical dimensions govern over scaled dimensions,

(2) Larger scale drawings govern over smaller scale drawings, and

(3) Notations, directions, and dimensions (whether word or numerical) control over schedules and table references.

Any requirement occurring in one or more of the sheets is as binding as though occurring in all applicable sheets.

(V) Delete 105.05 Cooperation with Utility Companies in its entirety. (See 107.21 – Utilities and Services).

(VI) Amend 105.06 Cooperation Between Contractors to read as follows:

235 **"105.06 Coordination Between the Contractors.** Other work by other
236 Contractors may be in progress within or near the project limits. Each Contractor
237 shall conduct work so as not to hinder the progress of the work by other
238 Contractors within or near the project limit. Each Contractor shall be
239 responsible for any damage it causes to work of another Contractor.
240 Contractors shall cooperate with each other, including but not limited to:

- 241
- 242 (1) Coordinating their work schedules and traffic control plans;
- 243
- 244 (2) Placing and disposing the materials used;
- 245
- 246 (3) Operating and storage of equipment.
- 247

248 **(VII) Amend 105.07 Construction Stakes, Lines and Grade** to read as
249 follows:

250

251 **"105.07 Construction Stakes, Lines and Grades.**

252

253 **(A) General.** The Contractor shall survey and stake out the work
254 including verification and establishment of all lines, grades, dimensions,
255 and elevations within the tolerances shown in Table 105.10-1 –
256 Construction Survey and Staking Tolerances. The Contractor shall prepare
257 and maintain field notes and supporting data in a manner acceptable to the
258 Engineer. The field notes and supporting data shall be made available to
259 the Engineer immediately upon request. The personnel doing the survey
260 work and preparing the calculations derived therefrom shall be made
261 available by the Contractor to the Engineer for explanation, clarification, or
262 both, immediately upon request.

263 The Contractor shall immediately correct or replace deficient or
264 inaccurate layout and construction work at no increase in contract price or
265 contract time.

266 **(B) Survey and Staking Requirements.** The Engineer will furnish
267 control points for the project limits, points of intersection, and
268 benchmarks set by the Engineer or others. The Contractor shall be
269 responsible for the laying out of all other necessary work from the given
270 information. The Contractor shall reset the layout as many times as
271 necessary to perform the work.

272

273 The Contractor shall preserve control points and stakes or marks that
274 the Engineer or others have furnish. If the Contractor destroys or disturbs
275 the control points, stakes, or marks, the State will charge the Contractor
276 the cost of replacing the stakes or marks.

277

Table 105.10-1 Construction Survey and Staking Tolerances⁽¹⁾		
Staking Phase	Horizontal	Vertical
Existing State network control points	±0.06 feet	±0.035 feet × \sqrt{M} ⁽²⁾
Local supplemental control points set from existing State network points	±0.03 feet	±0.01 feet × \sqrt{N} ⁽³⁾
Centerline points ⁽⁴⁾ — (PC), (PT), (POT), and (POC) including references	±0.03 feet	±0.03 feet
Other centerline points	±0.16 feet	±0.16 feet
Cross-section points and slope stakes ⁽⁵⁾	±0.16 feet	±0.16 feet
Slope stake references ⁽⁵⁾	±0.16 feet	±0.16 feet
Culverts, ditches, and minor drainage structures	±0.16 feet	±0.06 feet
Retaining walls and curb and gutter	±0.06 feet	±0.03 feet
Bridge substructures	±0.03 feet ⁽⁶⁾	±0.03 feet
Bridge superstructures	±0.03 feet ⁽⁶⁾	±0.03 feet
Clearing and grubbing limits	±2.00 feet	—
Roadway subgrade finish stakes ^{(7) (8)}	±0.16 feet	±0.03 feet
Roadway finish stakes ^{(7) (8)}	±0.16 feet	±0.03 feet
<p>(1) At 95% confidence level. Tolerances are relative to existing State network control points.</p> <p>(2) M is the distance in miles.</p> <p>(3) N is the number of instrument setups.</p> <p>(4) Centerline points: PC - point of curve, PT - point of tangent, POT - point on tangent, POC - point on curve.</p> <p>(5) Take the cross-sections normal to the centerline ±1 degree.</p> <p>(6) Bridge control is established as a local network and the tolerances are relative to that network.</p> <p>(7) Includes paved ditches.</p> <p>(8) Set stakes at the top of subgrade and the top of each aggregate course.</p>		

279

280

281

(VIII) Delete 105.08 Authority and Duties of Project Engineer in its entirety.
 (See 105.01 – Authority).

282 (IX) Delete **105.09 Duties of the Inspector** in its entirety. (See 105.01 –
283 Authority).

284
285 (X) Amend **105.10 Inspection of Work** to read as follows:
286

287 **105.10 Inspection of the Work and Materials.** Materials and each part or
288 details of the work shall be subject to inspection by the Engineer. The Contractor
289 shall furnish the Engineer information, assistance, and provide appropriate
290 safeguards and equipment to allow a complete inspection to be made.
291

292 The Engineer may inspect the production, fabrication, and manufacture
293 of materials and items that are to be incorporated into the work. The Contractor
294 shall ensure that the producer, fabricator, and manufacturer provide access to
295 the Engineer, without adjustment in contract price or contract time, at the
296 source of such materials and items or at any other place such materials or items
297 may be located before they are incorporated into the work. The Engineer will
298 comply with safety procedures established by the facility. When any government
299 agency or any utility company is to pay a portion of the cost of the work covered
300 by this contract, they shall have the right to inspect the work. Such inspection
301 shall not make that government or utility company a party to this contract.
302

303 For any inspection, the Contractor shall expose or uncover such portions
304 of the work as requested by the Engineer. After inspection, the Contractor shall
305 restore that portion of the work to the standard required by the contract. When
306 the Engineer orders an inspection that is not considered a normal daily, pre-final
307 or final inspection, that requires uncovering, damage to or destruction of or
308 work in place:
309

310 (1) If the exposed and inspected work conforms to the contract
311 requirements, the State will reimburse the reasonable costs of exposing,
312 inspecting and or restoring the work, as extra work and extend contract
313 time as appropriate.
314

315 (2) If the exposed and inspected work is non-conforming or otherwise
316 non-acceptable, the costs and time relating to the exposing, inspecting
317 and restoring of the work is not reimbursable.
318

319 (3) No reimbursement will be allowed for the costs and time of
320 exposing, inspecting and restoring work that the Engineer had not been
321 given reasonable opportunity to inspect before it was covered.
322

323 When the contract documents or a written directive from the Engineer
324 requires that certain work not proceed until the Engineer is given notice and the
325 opportunity to inspect, the Engineer may order the work done or materials used
326 without the Engineer having been given notice and opportunity to inspect, to be
327 removed and replaced at no increase in contract price or contract time.
328

Inspections are performed for the exclusive benefit of the State. The inspection of or the failure to inspect the work shall not relieve the Contractor of obligations to fulfill the contract as prescribed, to correct defective work, and to replace unsuitable or rejected materials regardless of whether payment for such work has been made."

(XI) Amend 105.12 Removal of Unacceptable and Unauthorized Work to read as follows:

"105.12 Removal of Non-Conforming and Unauthorized Work. All work that does not conform to the requirements of the contract shall be remedied or removed and replaced by the Contractor at no increase in contract price, contract time, or both. No payment will be made for non-conforming work.

Any work done beyond the work limits shown on the drawings and specifications or established by the Engineer or any additional work done without written authority will be considered as unauthorized work. No payment will be made for unauthorized work. Unauthorized work may be ordered removed at no increase in contract price, contract time, or both.

The Engineer may require that the Contractor submit a schedule acceptable to the Engineer for the performance of corrective or remedial work at the convenience of the State. Should the Contractor fail to submit an acceptable schedule or fail to comply with the accepted schedule for performance of corrective or remedial work, or otherwise fail to comply with any order of the Engineer regarding remedial, corrective, removal and replacement work, the Engineer shall have the authority, in addition to all other remedies, provided by contract or law, to cause non-conforming work to be remedied or removed and replaced, and unauthorized work removed, by someone other than the Contractor. The Engineer may charge the Contractor the cost of such work, or to deduct the costs from any monies due or to become due the Contractor, or combination thereof."

(XII) Delete 105.13 Load Restrictions in its entirety. See 104.15 – Overweight Vehicle Control and 401.05(B)(5) – Material Transfer Vehicle (MTV).

(XIII) Amend 105.14 Maintenance to read as follows:

"105.14 Maintenance. The Contractor shall maintain the work until final acceptance of the project. If the Contractor fails to remedy unsatisfactory maintenance after receipt of a written directive from the Engineer, the Engineer shall have the authority, in addition to other remedies by law, to have such maintenance performed by someone other than the Contractor, to charge the Contractor for such maintenance and/or deduct the cost of such maintenance from monies due or become due to the Contractor."

(XIV) Amend 105.17 Acceptance to read as follows:

376 **"105.17 Final Acceptance.** When the Engineer finds that the project has
377 been satisfactorily completed in compliance with the contract, the Engineer will
378 notify the Contractor in writing of the project's completion and acceptance and
379 will notify the Contractor in writing of its acceptance effective as of the date of the
380 final inspection. The final acceptance date shall determine end of contract time,
381 liquidated damages for failure to complete the punchlist and commencement of
382 all guaranty periods subject to Subsection 108.16 – Contractor's Responsibility
383 for Work; Risk of Loss or Damage."
384

385 **(XV) Amend 105.18 Claims for Adjustment and Disputes** to read as follows:
386

387 **"105.18 Disputes and Claims.**
388

389 **(A) Written Notice A Condition Precedent to Claim.** As a condition
390 precedent to any claim for damages, or any matter dealing with contract
391 price or contract time, the Contractor must give notice of a potential claim
392 in writing as required by the contract documents including but not limited
393 to the following Subsections of these general provisions:
394

- 395 (1) 104.02 – Changes
- 396 (2) 104.03 – Field Orders
- 397 (3) 104.12 – Differing Site Conditions
- 398 (4) 104.13 – Contract Change Orders
- 399 (5) 105.02(B) – Review and Acceptance Process
- 400 (6) 106.03 – Sample Submittals
- 401 (7) 108.07 – Contract Time
402

403 **(B) Contractor's Duty to Maintain Accurate and Contemporaneous**
404 **Records.** Upon delivering written notice of a potential claim as described
405 in Subsection 105.18(A) – Written Notice A Condition Precedent to Claim,
406 the Contractor has the duty to support and substantiate all claims by
407 maintaining accurate, contemporaneous records of the subject work and
408 the time and costs thereof. The Engineer may direct the manner and the
409 format in which such records must be prepared, maintained, and verified.
410 The Contractor shall comply with such directives at no increase in contract
411 price or contract time. Any directive from the Engineer regarding the
412 manner and format for the keeping of records associated with the
413 potential claim shall not in any way be deemed an agreement by the State
414 regarding the validity of any element of the claim.
415

416 **(C) Contractor to Proceed with Work.** The Contractor shall at all
417 times continue with performance of the contract in full compliance with the
418 directions of the Engineer. Continued performance by the Contractor
419 shall not prejudice any claim for damages or any matter dealing with
420 contract price or contract time provided that the notice of a potential claim
421 is given in writing by the Contractor in the manner and within the time set
422 forth in the contract documents.

(D) Making of a Claim. All Contractors' claims for damages or any matter dealing with contract price or contract time shall be submitted in writing to the Engineer. The written submission (THE CLAIM) shall be clearly identified and labeled as a claim. The Contractor shall sequentially number its claims in the chronological order submitted to the Engineer. No claim shall be valid if it is delivered to the Engineer after the date of final acceptance or later than 180 days after Contractor's delivery of its notice of potential claim, whichever comes first.

The Claim shall, at a minimum, contain the following:

(1) A detailed description of the facts and circumstances that justify every element of claim. The detailed description shall include, but is not limited to, providing all necessary dates, locations, and items of work affected by the claim.

(2) The specific provisions of the contract or laws which support the claim and a statement of the reasons why such provisions support the claim.

(3) A copy of the related written notice of potential claim required by Subsection 105.18(A) – Written Notice A Condition Precedent to Claim.

(4) Any other documents that support the claim.

(5) If an adjustment of time for the performance of the contract is sought:

(a) The specific days and dates for which it is sought.

(b) The specific reasons the Contractor believes a time adjustment should be granted.

(c) The specific provisions of the contract under which additional time is sought.

(d) The Contractor's detailed analysis of its previously submitted time scaled logic diagram (TSLD) schedule and impact on the critical path.

(6) If additional monetary compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:

(a) Labor. Listing of individuals, description and location of work performed, classification, hours worked,

wage rate, fringe benefits, employee number if available, etc.

(b) Materials. Invoices, purchase orders, evidence of payment, descriptions and quantities, etc.

(c) Equipment. Detailed description (make, model, year, attachments, serial number, etc.), hours of use and dates of use. Equipment rates shall be subject to the terms and limitations as set forth in Subsection 109.02 – Payment for Additional and Force Account Work.

(d) Contractor's Margin for Profit and Overhead.

(e) Other categories as specified by the Contractor or the State.

(7) The claim shall be certified on behalf of the Contractor by an authorized representative, as follows:

Under penalty of law for submission of false claims, false statements, and misrepresentation, the undersigned,

(Name)

(Title)

(Company)

hereby certifies that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the State of Hawaii is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

Signature

Date

(E) Engineer's Review and Decision. The Engineer shall review the claim, and may request and the Contractor shall provide additional information, documentation, and other evidence from the Contractor. The Engineer may conduct interviews with Contractor's employees and other persons having knowledge related to the claim.

515 The Engineer shall render a written decision on the claim after the
516 claim is complete and fully documented, as follows:

- 517
518 (i) Within 60 days for claims less than \$50,000
519
520 (ii) Within 90 days on claims exceeding \$50,000.
521

522 If the Engineer does not issue a written decision within the time
523 period described herein, then the Contractor may proceed as if the claim
524 has been denied in its entirety. If the claim submittal is found to be
525 incomplete, the Contractor shall be notified to provide the additional
526 information that is required. When this occurs, the Engineer's review
527 time will be adjusted as deemed appropriate and the Contractor will be
528 notified.
529

530 The decision will be sent to the Contractor by Certified Mail, Return
531 Receipt Requested.
532

533 **(F) Appeal of the Engineer's Decision.**
534

535 (1) Any Contractor aggrieved by an adverse decision by the
536 Engineer on a claim may appeal the decision to the Director, as
537 head of the purchasing agency as specified in the Hawaii
538 Administrative Rules for Procurement Disputes.
539

540 (2) Appeals of the Engineer's decision must be filed in writing
541 not later than 30 days after delivery of the Engineer's decision on
542 the claim to the Contractor, or if no written decision is delivered,
543 within 30 days after the deadline for the Engineer's decision. A
544 copy of the notice of appeal of the Engineer's decision shall be
545 delivered to the Engineer
546

547 (3) The record on appeal by the Contractor to the Director shall
548 be limited to the Claim as submitted by the Contractor described in
549 Subsection 107.15(D) – Making of a Claim, the Engineer's
550 response to the claim, the project file, and any other material or
551 evidence the Director, in the Director's discretion, believes may be
552 useful in deciding the merits of the appeal.
553

554 (4) In its notice of appeal of the Engineer's decision, the
555 Contractor shall provide specific citations to the Engineer's decision
556 and explanations as to why the Contractor believes the Engineer's
557 decision was incorrect.
558

559 (5) All controversies and claims which are appealed to the
560 Director shall be decided by the Director within 90 days after the
561 filing of the appeal by the Contractor; provided that:

562 (a) If the Director does not issue a written decision within
563 90 calendar days after written request for a final decision, or
564 within such longer period as may be agreed upon by the
565 parties, then the Contractor may proceed as if the appeal
566 was denied.

567
568 (b) The Director immediately furnishes a copy of the
569 decision to the Contractor, by certified mail, return receipt
570 requested, or by any other method that provides evidence
571 of receipt.

572
573 (c) Any such decision shall be final and conclusive,
574 unless fraudulent, or unless the Contractor brings an action
575 seeking judicial review of the decision in a Hawaii circuit
576 court within the six months from the date of receipt of the
577 decision.

578
579 (G) **Contractor's Duty to Continue Work.** During the Claim review
580 and appeal process including any litigation in relation to the Claim, the
581 Contractor shall proceed diligently with performance of this contract,
582 except where:

583
584 (1) The State has suspended the work, or has terminated the
585 contract for default of the Contractor or for the convenience of the
586 State;

587
588 (2) There has been an alleged material breach of contract by
589 the State excusing further performance by the Contractor;
590 provided that in such event the Contractor shall proceed diligently
591 with the performance of the contract where the Director has made
592 a written determination that continuation of work under the contract
593 is essential to the public health and safety."

594
595 (XVI) Delete **105.19 Value Engineering** in its entirety. (See 104.10 – Value
596 Engineering Incentive Proposal).

597
598 (XVII) Amend **105.20(A) General** by revising the first sentence to read as
599 follows:

600
601 "(A) **General.** The Contractor and the Department will establish a
602 Disputes Review Board (Board) when the proposal amount is more than
603 fifty million dollars (\$50,000,000) or the completion time is more than 360
604 working days."

605
606 (XVIII) Add the following:

607
608 **"105.21 Coordination Between the Contractor and the State.**

609 (A) **Furnishing Drawings and Special Provisions.** The State will
610 furnish the Contractor 10 sets of the project plans and special provisions.
611 The project plans furnished will be the same size as that issued for
612 bidding purposes. The Contractor shall have and maintain at least one
613 set of plans and specifications on the work site, at all times.
614

615 (B) **Superintendent.** The Contractor shall have a competent
616 superintendent on the work site while work is being performed under the
617 contract. The superintendent shall be able to read and understand the
618 contract documents, shall be experienced in the type of project being
619 undertaken and the work being performed, and shall be fluent in the
620 English language. If a superintendent is not present at the work site,
621 the Engineer shall have the right to suspend the work as described under
622 Subsection 108.11 – Suspension of Work.
623

624 The Contractor shall provide the Engineer a written statement
625 giving the name of the superintendents assigned to the project. The
626 Contractor shall be responsible for notifying the Engineer in writing of any
627 change in the superintendents in a timely manner.
628

629 **105.22 Submittals.** The contract contains the description of various items
630 that the Contractor must submit to the Engineer for review and acceptance.
631 The Contractor shall review all submittals for correctness, conformance with the
632 requirements of the contract documents and completeness before submitting
633 them to the Engineer. The submittal shall indicate the contract items and
634 specifications subsections for which the submittal is provided. The submittal
635 shall be legible and clearly indicate what portion of the submittal is being
636 submitted for review if more than the required submissions at the earliest
637 possible date. The Contractor shall provide six copies of the required submissions at the
638 earliest possible date.
639

640 Failure to furnish acceptable submittal(s) may result in the suspension of
641 payments due the Contractor.
642

643 The Contractor shall not add onto the submittals any conditions or
644 disclaimers that conflict with the contract requirements.”
645

646 **105.23 Storage and Handling of Materials and Equipment.**
647

648 (A) **Contractor's Responsibility.** The Contractor as part of the
649 contract price shall provide all storage space. Materials shall be stored
650 and handled to preserve their quality and fitness for the work. The
651 Contractor shall locate stored materials so as to facilitate their prompt
652 inspection by the Engineer. No State land outside the project limits may
653 be used without authority granted by the State agency having jurisdiction
654 over the site. Prior to final inspection, the Contractor at no increase in
655 contract price or contract time shall restore all storage sites within the

project limits to their pre-existing or to a different condition approved by the Engineer.

(B) Permit. Consistent with State law and subject to the application of the Contractor, the State shall issue a permit for storage of materials and equipment within the State highway right-of-way.

(C) Designated Storage Area. The Contractor may store materials and equipment only within the areas designated in the contract documents.

(D) No Designated Storage Area. If no storage area is designated within the contract documents, materials and equipment may be stored anywhere within the State highway right-of-way, provided such storage and access to and from such site, within the sole discretion of the Engineer, does not create a public or traffic hazard or an impediment to the movement of traffic.

No State land outside the project limits may be used without authority granted by the State agency having jurisdiction over the site. Prior to final inspection, the Contractor at no increase in contract price or contract time shall restore all storage sites within the project limits to their pre-existing or to a different condition approved by the Engineer.

(E) Contractor's Risk. The Contractor assumes all risk of loss or damage to the stored materials and equipment within the State highway right-of-way. Storage of materials and equipment within the highway right-of-way is an element of the Contractor's "performance" as referred to in Subsection 107.14 – Responsibility for Damage claims; Indemnity herein. The failure of the Engineer to deny the Contractor the opportunity to store materials and equipment at any particular location at any particular time shall not relieve the Contractor of the primary responsibility to avoid creating traffic and public safety hazards.

105.24 Examination of Contract Documents and Project Site. The Contractor shall examine carefully the project site to become familiar with the conditions to be encountered in performing the work and the requirements of the contract documents. The Contractor shall be charged with knowledge of all conditions at the site that may affect the work, including the storage of materials and equipment and access thereto, that would normally be discovered by a reasonable pre-bid site inspection.

When the contract drawings include a log of test borings showing a record of the data obtained by the State's investigation of subsurface conditions, said log represents only the finding of the State as to the character of material encountered in its test borings and only at the location of each boring. Underground site conditions in Hawaii vary widely. Accordingly there is no

warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work or any part of it, or that other conditions may not occur.

Subsurface investigations, reports, explorations, and tests utilized by the State in preparation of the contract documents are not part of the contract documents, whether or not they are made available for review and inspection by the Contractor."

END OF SECTION 105