

SECTION 104 - SCOPE OF WORK

Make the following amendments to said Section:

(I) Amend **104.01 Contract** to read as follows:

"104.01 Intent of Contract, Duty of Contractor. The intent of the contract is to provide for the construction, complete in every detail, of the work described at the accepted bid price and within the time established by the contract. The Contractor has the duty to furnish all labor, materials, equipment, tools, transportation, incidentals and supplies and to determine the means, methods and schedules required to complete the work in accordance with the contract documents."

(II) Amend **104.02 Alterations of Plans or Type of Work** to read as follows:

"104.02 Changes. The Engineer may at any time, during the progress of the work, by written order and without notice to the sureties, make changes in the work as may be found to be necessary or desirable. Such changes shall not invalidate the contract nor release the surety and the Contractor will perform the work as changed, as though it had been a part of the original contract.

(A) Minor Changes. The Engineer may direct minor changes in the work with no changes in contract price or time of performance. If the Contractor believes a minor change directive justifies an increase in contract price or time it must follow the oral and written notice requirements set forth in Subsection 104.02(B) – Orders and Directives.

(B) Orders and Directives. Only a duly issued change order or field order may alter the contract terms and work requirements. Any order, direction, instruction, interpretation or determination from the Engineer that is not a field order or change order, may be considered as a compensable change only if the Contractor gives the Engineer an oral notice of its intent to treat such order, direction, instruction, interpretation or determination as a change directive before the Contractor acts in conformity with the order, direction, instruction, interpretation or determination but not later than noon of the following working day. The oral notice shall be followed by a written notice of a potential claim that must be delivered to the Engineer within five days after communication of the order, direction, instruction, interpretation, or determination to the Contractor. The written notice of a potential claim shall state the date, circumstances, and source of the order, direction, instruction, interpretation, or determination that the Contractor regards as a compensable change, and provide a detail justification for additional payment for time. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless

the Contractor acts in accordance with this procedure, any such order or directive shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time, compensation, or contract price related to such work.

No more than ten working days after receipt of the written notice of potential claim from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of its potential claim if a written response is not issued in the time established. If the Contractor objects to the Engineer's position, it shall file a written claim with the Engineer within 30 days after delivery to the Engineer of the Contractor's written notice of a potential claim. Failure by the Contractor to submit a written notice of a potential claim in the time specified waives all rights for an increase in contract time or compensation related to such work. The protest shall be determined as provided in Subsection 105.18 – Claim for Adjustments and Disputes. In all cases, the Contractor shall proceed with the work as specified in the order, direction, instruction, interpretation, or determination immediately upon providing the Engineer with the oral notice described above, unless otherwise directed in writing by the Engineer.

(C) Penal Sum of the Surety Performance and Payment Bonds. The penal sum of the Surety Performance and Payment Bonds will be adjusted by the amount of each and every Contract Change Order."

(III) Move and Amend 104.02(C) Differing Site Conditions. (See 104.12 – Differing Site Conditions)

(IV) Amend 104.03 Extra Work to read as follows:

"104.03 Field Orders. Upon receipt of the field order the Contractor shall proceed with the work as changed by the field order without delay. If the Contractor does not agree with any of the terms or conditions or the adjustment or nonadjustment to the contract time and/or contract price set forth therein, the Contractor shall file a written notice of potential claim with the Engineer not later than three days after receipt of the field order. No more than ten working days after receipt of the written notice of a potential claim from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of its potential claim if a written response is not issued in the time established. If the Contractor objects to the Engineer's position, it shall file a written claim with the Engineer within 30 days after delivery to the Engineer of the Contractor's written notice of a potential claim. Failure to file the written notice of a potential claim or to protest any portion(s) of the field order by the time specified shall constitute agreement on the part of the Contractor with all the terms, conditions, amounts and adjustment or non-adjustment to contract price and/or contract time set forth

in the field order or the non-protested portion of the field order. Timely written notice shall be a non-waivable condition precedent to the assertion of a claim."

(V) Amend **104.04 Maintenance of Traffic** to read as follows:

"104.04 Maintenance of Traffic.

(A) General.

The Contractor shall keep the road open to traffic during the progress of the work according to Section 645 - Work Zone Traffic Control.

The Contractor shall furnish, erect, and maintain lights, barricades, signs and other traffic control devices. Also, the Contractor shall take precautions for the protection of the work and safety of the public according to Section 645 - Traffic Control Devices.

Obstructions to a roadway attributable to construction, maintenance, or engineering survey on or near public streets and highways are a major hazard to motorists, pedestrians and workers at the work site. The Contractor shall take such safety and precautionary measures as may be required according to Chapter 286, HRS; the Hawaii Administrative Rules, Title 19, Subtitle 5, Chapters 127, 128 and 129; and the most current editions or revisions of the MUTCD.

Where so provided on the plans, the Contractor may bypass traffic over an acceptable detour route. Keep the portion of the project used by public traffic in passable condition. Also, provide and maintain temporary crossings with trails, roads, streets, businesses, parking lots, garages, residences, and farms.

If elimination of abutting owners' access occurs, do not close the existing access until the replacement access facilities are usable. The Contractor may obtain written permission from the abutting owners setting the conditions for closing the existing access. Submit a copy of this agreement with the abutting owners to the Engineer for acceptance before such work begins.

Provide a smooth and even surface for public traffic use when working on an existing facility kept open to traffic. Conduct such work on only portion of the roadway. Alternate construction from one side to the other while routing traffic over the opposite side. Place sufficient fill at culvert and bridge locations to permit traffic to cross. Conduct culvert installation on only portions of the roadway to permit safe passage of traffic.

During subgrade and paving operations, consider use of shoulders for public traffic. If using part-width paving methods, consider use of side of the roadbed opposite the one under construction for public traffic. Keep a passageway wide enough to make at least two lanes of traffic open when sufficient width is available. The Engineer will consider shaping or maintaining the shoulders as included in the contract price of the various contract items and the Department will not make additional compensation.

Do not store material or equipment where the material or equipment will interfere with public traffic. Remove equipment and other obstructions to permit free and safe passage of public traffic when each day's work ends or if suspension of construction operations occurs.

Traffic incidental to other construction projects that abuts the principal routes of travel are part of the public traffic and shall be as required by contract.

The Contractor shall bear expenses of maintaining traffic over the section of road undergoing improvement or repair. Also, bear expenses of constructing, maintaining, removing, and furnishing approaches, crossings, intersections, and flaggers and their equipment, without direct compensation. Exceptions are as follows:

(1) Special Detours. The Department will cover payment for cost of constructing, maintaining, and removing such detour(s) when the proposal contains an item for "Construction and Maintenance of Detours". Also, the Department will include payment for the construction and removal of temporary bridges and accessory features. The Department will furnish right-of-way for temporary highways or bridges called for under this paragraph.

(2) Maintenance of Traffic During Suspension of Work. Provide safe passage for public traffic through the work site according to Subsection 108.10 - Suspension of Work.

(3) Special Maintenance Specified by the Engineer. The Engineer will pay the Contractor on the basis of unit prices or under Subsection 104.03 - Field Orders if the Engineer specifies the special maintenance. The Engineer will be the sole judge of work to be classified as special maintenance.

(B) Traffic Maintenance Plans. Submit in writing traffic maintenance plans and schedules, including plans and schedules for traffic detours, road or lane closures, lane switches and the placement of temporary traffic control devices, warning signs, barricades and other protective

186 devices, to the Engineer for acceptance at least ten working days before
187 the date such work is scheduled to begin.

188
189 Such plans and schedules shall contain:

- 190
191 (1) A brief description of the work,
192
193 (2) Dates of work,
194
195 (3) Times of day affected,
196
197 (4) Proposed public information sign,
198
199 (5) Proposed news release, and
200
201 (6) Detour layout plans.
202

203 If doing work in a city or town, give the Fire Department at least 24
204 hours notice in writing before blocking or closing off access to streets.
205 Keep fire hydrants accessible to the Fire Department. Do not place
206 material or other obstruction closer to a fire hydrant than permitted by
207 ordinances, rules or regulations. If there are no ordinances, rules or
208 regulations, do not place material or other obstruction within 5 feet of a
209 fire hydrant.
210

211 Make arrangements according to the contract for emergency work
212 that may be required when work is not in progress.
213

214 The Contractor shall do all paving work including cold planing,
215 road reconstruction, road resurfacing (including leveling course and finish
216 course) and driveway paving at night.
217

218 The Engineer will allow the Contractor to perform night work only
219 as follows:
220

221 Sunday	10:00 P.M. – Midnight
222 Monday thru Thursday	Midnight – 6:00 A.M.
223	10:00 P.M. – Midnight
224 Friday	Midnight – 6:00 A.M.
225	

226 The Contractor shall not do work on Friday nights and Saturdays or
227 as specified by the Engineer. Sunday's work will be part of Monday's
228 working day.
229

230 During night work, the Engineer will permit the Contractor to close
231 only one lane of traffic during its working hours.
232

233 As specified in Section 107.08 – Permits, Licenses and Taxes, the
234 Contractor shall be responsible in obtaining necessary noise variance
235 permit from the State Department of Health. If the State Department of
236 Health denies the noise variance permit to allow the Contractor to work at
237 night for all paving works specified above, the Contractor shall perform
238 these paving works during daytime working hours. The Engineer will
239 permit the Contractor to close only one lane of traffic during daytime
240 working hours for all paving works specified above.

241
242 Daytime work shall be conducted between the hours of 8:30 A.M.
243 and 3:30 P.M.

244
245 The Contractor may do pavement marking and striping, traffic
246 signing, curb ramp and gutter reconstruction, utility and traffic signal box
247 adjustment and/or relocation, drain inlet adjustment and/or installation,
248 street survey and centerline and reference survey monument adjustment
249 and/or installation, pedestrian push button and pedestal installation and
250 dressing of shoulder during daytime working hours. The Contractor shall
251 provide two lanes of traffic (one lane in each direction) during the
252 performance of these works during daytime working hours. Failure to
253 open two lanes of traffic (one lane in each direction) during daytime
254 working hours shall result in assessment of liquidated damages as
255 specified in Section 108.09 - Liquidated Damages for Contractor's Delays.

256
257 During non-working hours, keep all lanes open to traffic and allow
258 traffic to flow at the normal posted speed limit.

259
260 Failure to open lanes to traffic beyond the above lane closure
261 hours shall result in assessment of liquidated damages as specified in
262 Section 108.09 - Liquidated Damages for Contractor's Delays.

263
264 Notify the State and County transportation agencies including Bus
265 Systems Division, Police Department, Fire Department, Ambulance
266 Service, and the Department of Health in writing at least five days before
267 the start of construction.

268
269 Construct, install, maintain, and remove two advisory signs as
270 specified by the Engineer. Place the signs within the project limits. The
271 signs shall have black letters on orange background. The minimum size
272 of the signs shall be four feet high by eight feet wide.

273
274 The sign message shall include the starting date, hours, limits
275 and duration of construction. The height of the letters shall be 8 inches,
276 Series D. If accepted by the Engineer, the Contractor may use a
277 minimum height of 6 inches, Series D. The Engineer will review and
278 accept the advisory sign wording before installing. Install the advisory
279 sign two weeks before the start of construction.

280 Take measures necessary to insure that safe and easily accessible
281 passage is provided for pedestrians who must travel in or near the
282 construction zone.
283

284 The Engineer will consider payment for furnishing, placing,
285 maintaining and removing the advisory signs and insuring safe and
286 accessible passage for pedestrians included in the bid price of the
287 various contract items. The Engineer will pay additional advisory signs
288 as specified by the Engineer under Additional Police Officers and/or
289 Additional Traffic Control Devices.
290

291 Submit requests for review and acceptance of detours and lane
292 closures that will impact traffic during peak hours before scheduling the
293 work to begin as follows:
294

295 (1) detours - 8 weeks, and
296

297 (2) lane closures - 6 weeks.
298

299 Also, these requests shall include:
300

301 (1) An explanation of proposed changes to the existing traffic
302 pattern;
303

304 (2) A schedule of when installing informational and traffic
305 control signs;
306

307 (3) A schedule of when publishing advertisements;
308

309 (4) A plan showing the proposed informational and traffic
310 control signs; and
311

312 (5) A plan showing the lane changes or detours. Plans for
313 multi-lane highway lane changes and detours shall include details
314 of the beginning of the lane changes or detours.
315

316 The Engineer will not make payment for reviewing request
317 submittals.
318

318 **(C) Advertisement.** If requested by the Engineer, place an advertisement
319 in the newspaper for the following traffic pattern changes in operation during
320 peak hours or night work:
321

322 (1) Detours;
323

324 (2) Lane closure;
325

- 326 (3) Permanent road closure; and
327
328 (4) Permanent new route that changes a previous route.
329

330 The advertisement shall contain the following information:
331

- 332 (1) Map of traffic pattern change limits;
333
334 (2) Map showing lane(s) closure and detour pattern;
335
336 (3) Notice of starting and ending dates and duration; and
337
338 (4) Explanation of the lane(s) closure or detours "Notice To
339 Motorist".
340

341 The quality of the map shall be as follows:
342

- 343 (1) The Department will not allow free hand printing or pencil;
344
345 (2) Highlight important feature in bold letters by darkening,
346 cross-hatching, crossing-out or coloring;
347
348 (3) Minimum size shall be five columns wide and four columns
349 deep. Lesser width columns may be considered to balance against
350 the size of the drawing.;

351 (4) Text Specifications.
352

- 353 (a) Work being featured - 3/16 inch text
354
355 (b) Major roads and features - 1/8 inch text
356
357 (c) Other roads and features- first letter upper case
358
359 (d) "Notice to Motorists" in upper case
360
361 (e) Message - first letter upper case
362

363 (5) Line Thickness.
364

- 365 (a) Important feature being advertised - thicker than rest
366 of map
367
368 (b) Directional arrow - bolder than the rest of the lines
369 shown on the map, when important, to show the route
370 traffic should use.
371

(6) Show reference direction such as "TO HILO, WAILUKU, HONOLULU, or LIHUE" with arrow.

The Contractor shall submit:

(1) the "Notice to Motorists" for review and acceptance before placement in the newspaper 6 weeks before the start of work.

(2) the actual size of the notice to be published in the newspaper for review and acceptance. The Engineer will not allow reduction of the notices once accepted. The final "Notice to Motorists" submittal shall be a good copy of the camera ready advertisement.

Place the advertisement for three consecutive days and within one week before the traffic pattern changes in the:

☐ West Hawaii Today

☐ Hawaii Tribune-Herald Ltd

☒ Garden Island

☐ Maui News

☒ Honolulu Star-Bulletin and Honolulu Advertiser

Provide message boards as requested by the Engineer prior to lane or ramp closures.

The Contractor is directed to Section 645 - Work Zone Traffic Control for payment of advertisement.

(VI) Amend **104.05 Construction and Maintenance of Detour** by deleting the second paragraph in its entirety.

(VII) Amend **104.06 Rights in and Use of Materials Found on the Work** by deleting it in its entirety. (See 106.02 – Natural Material Source)

(VIII) Add the following:

"104.09 Method of Price Adjustment. Any adjustment in the contract price pursuant to a change or claim in this contract shall be made in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) By unit prices or other price adjustments specified in the contract or subsequently agreed upon;

(3) The Engineer may base the adjustment for a lump sum item on a calculated proportionate unit price. The Engineer will calculate the proportionate unit price by dividing the original contract lump sum price by the actual or original estimated quantity established by the Contract Documents;

(4) In such other manner as the parties may mutually agree; or

(5) At the sole option of the Department, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as specified in Subsection 109.04(A) - Allowances for Overhead and Profit and the force account provision of 109.04 - Payment for Additional Work;

(6) By a determination by the Department of the reasonable and necessary costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as computed by the generally accepted accounting principles and applicable sections of Chapter 3-123 and 3-126 of the HAR and Subsection 109.04(A) - Allowances for Overhead and Profit herein."

(IX) Amend Subsection 105.19 Value Engineering to read as follows:

"104.10 Value Engineering Incentive Proposal. On any contract in an amount greater than \$100,000, the Contractor shall be entitled to an equitable adjustment to share in cost savings resulting from the value engineering proposal, subject to the following conditions:

(1) A value engineering proposal must result in savings to the State by providing less costly items than those specified in the contract without impairing any of their essential functions and characteristics such as service life, reliability, substitutability, economy of operations, ease of maintenance, and necessary standardized features;

(2) A value engineering proposal shall not be deemed accepted until a change order has been issued establishing the proposed as part of the work;

(3) A value engineering proposal must be submitted in conformity with, and is subject to the terms and conditions of HAR §3-132."

(X) Add the following:

465
466 **"104.11 Variations in Estimated Quantities.** Where the quantity of a unit
467 price item in this contract is estimated on the proposal schedule and where the
468 actual quantity of such pay item varies more than 15 percent above or below the
469 estimated quantity stated in this contract, an adjustment in the contract price
470 shall be made upon demand of either party. The adjustment shall be based
471 upon any increase or decrease in costs due solely to the variation above 115
472 percent or below 85 percent of the estimated quantity. The adjustment shall be
473 subject to Subsection 104.09 – Method of Price Adjustment and Subsection
474 109.05 - Allowances for Overhead and Profit."

475
476 **104.12 Differing Site Conditions.** The Contractor shall promptly and
477 before such conditions are disturbed, notify the Engineer of:
478

479 (1) Subsurface or latent physical conditions at the site differing
480 materially from those indicated in this Contract; or
481

482 (2) Unknown physical conditions at the site of an unusual
483 nature, which differ materially from those ordinarily encountered
484 and generally recognized as inherent in work of the character
485 provided for in this Contract.
486

487 **(A) Adjustments of Price or Time for Performance.** After receipt
488 of the notice, the Engineer shall promptly investigate the site and if it is
489 found that the conditions do materially so differ and cause an increase in
490 the Contractor's cost of, or the time required for, performance of any part
491 of the work under this Contract, whether or not changed as a result of the
492 conditions, an equitable adjustment shall be made and the Contract
493 modified by contract change order. Any adjustment in contract price or
494 time made pursuant to this clause shall be determined in accordance with
495 the price and/or time adjustment subsections of this Contract.
496

497 **(B) Timeliness of Claim.** No claim of the contractor under this
498 subsection shall be allowed unless: The contractor shall give a verbal
499 notice within 12 hours of discovery of the differing site condition and
500 written notification to the Engineer no later than 5 days after the discovery
501 of the differing site condition. The Engineer in writing may extend the
502 time prescribed in this subsection for giving verbal and written notice.
503 The notices to the Engineer are non-waivable conditions precedent to any
504 claim under this Section.
505

506 **(C) No Claim After Final Payment.** No request by the Contractor
507 for an equitable adjustment to the contract shall be allowed if asserted
508 after final payment under this Contract.
509

510 **(D) Knowledge.** Nothing contained in this subsection shall be
511 grounds for an adjustment in compensation if the Contractor had actual
512 knowledge of the existence of such conditions prior to the submission of
513 the bids.
514

515 **104.13 Contract Change Orders.** The Engineer will issue sequentially
516 numbered contract change orders at times it deems appropriate during the
517 contract period. A contract change order may contain the adjustment in contract
518 price and/or time for a number of field orders. In all cases, the Contractor shall
519 proceed with the work as changed by the contract change order. No payment
520 for any changes will be made until the contract change order is issued.
521

522 **104.14 Duty of Contractor to Provide Change Proposals.** A field order
523 may request the Contractor to supply the Engineer with a detail proposal for an
524 adjustment to the contract time or contract price for the work described therein.
525 Any such request for a proposal shall not affect the duty of the Contractor to
526 proceed as ordered with the work described in the field order.
527

528 The Engineer at times may issue a Request for Change Proposal to the
529 Contractor requesting price and/or time adjustment proposals for contemplated
530 changes in the work. The Request for Change Proposal is not a directive for
531 the Contractor to perform the work described therein.
532

533 The Contractor shall submit a detailed written proposal in a time span
534 allowed by the Engineer or if a time span is not stated by the Engineer it shall be
535 within 15 days after receipt of a request for Request for Change Proposal or field
536 order containing a request for proposal. The format shall set forth all charges
537 the Contractor proposes for the change and a detailed justification for the
538 proposed adjustment of the contract time, all properly itemized and supported by
539 sufficient substantiating data to permit evaluation. The Engineer will determine
540 whether the proposal is acceptable.
541

542 No payment shall be allowed to the Contractor for pricing or negotiating or
543 research or designs for proposed or actual changes. No time extensions will be
544 granted for delay caused by late Contractor pricing of changes or proposed
545 changes or time spent in negotiation.
546

547 The Engineer may accept the entire proposal, or any discrete cost item
548 contained within the proposal, or the proposed adjustment to contract time by a
549 notice in writing to the Contractor delivered to the contractor within thirty days
550 after receipt of the proposal. The written acceptance by the Engineer of all or
551 part of the Contractor's proposal shall create a binding agreement between the
552 parties for that aspect of the change.
553

554 If the Engineer refuses to accept the Contractor's entire proposal, the
555 Engineer may issue a field order for the work; or if a field order has already been
556 issued, the Engineer may issue a supplemental field order establishing new

557 contract prices, the remaining adjustments to contract price and /or contract time
558 for the ordered changes. If the Contractor disagrees with any term, condition or
559 adjustment contained in such field order or supplemental field order, it shall
560 follow the protest procedures set forth in and be subject to the other terms of
561 Subsection 104.03 - Field Orders.
562

563 **104.14 Overweight Vehicle Control.** All weight tags for aggregates and
564 hot mix asphalt concrete transported to the worksite shall be submitted daily to
565 the Engineer. The maximum legal total gross weight (W) as calculated by the
566 formulas in HRS 291-35 Gross weight, axle, and wheel loads, for the
567 transporting vehicle shall be clearly indicated on the weight tag. The Engineer
568 may inspect any material transporting vehicle for compliance with HRS 291-34 to
569 291-36 at no additional cost to the State. The Engineer may refuse entry to or
570 demand the removal from the worksite of any vehicle that exceeds the maximum
571 legal total gross weight and shall inform the appropriate enforcement authority of
572 the violation."
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578

END OF SECTION