

## SECTION 104 - SCOPE OF WORK

Make the following amendments to said Section:

- (I) Delete the paragraph before **104.01(B) Voluntary Partnering**.
- (II) Amend **104.01(B) Voluntary Partnering** by adding the following before the first sentence of the first paragraph:

"This provision applies to non-resurfacing projects with a construction cost estimated at over one million dollars (\$1,000,000.00)."

- (III) 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.

(B) **Oral Orders.** Any order, direction, instruction, interpretation or determination from the Engineer that is not a field order or change order, may be considered as a 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 oral 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 that must be delivered to the Engineer within five days after delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, and source of the order that the Contractor regards as a change, whether extra costs and a time extension will be requested, and Contractor's justification for claiming extra costs, or 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 oral 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 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 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 protest with the Engineer within 30 days after delivery to the Engineer of the Contractor's written notice of its intention to treat the oral order or directive as a change. Failure by the Contractor to submit a written notice 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 or directive 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."

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

**(V) Amend 104.03 Extra Work** to read as follows:

**"104.03 Extra Work.** All changes will be set forth in a written order from the Engineer. Upon receipt of a written order, the Contractor shall proceed with the changes. If the Contractor does not agree with any of the terms or conditions or the adjustment or non-adjustment to the contract time and/or contract price set forth therein, the Contractor shall file with the Engineer, a written protest setting forth its reasons in detail within 30 days after receipt of the written order. In all cases, the Contractor shall proceed with the work as changed. The protest shall be determined as provided in Subsection 105.18 - Claims for Adjustment and Disputes. Failure to file such protest within the time specified shall constitute an agreement on the part of the Contractor with the terms, conditions, amounts and adjustment or non-adjustment to contract price and/or contract time set forth in the written order."

**(VI) 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 108.06 - Temporary 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 - Extra Work 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 devices, to the Engineer for acceptance at least ten working days before the date such work is scheduled to begin.

Such plans and schedules shall contain:

- (1) a brief description of the work,
- (2) dates of work,
- (3) times of day affected,
- (4) proposed public information sign, and
- (5) proposed news release.
- (6) detour layout plans.

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

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

The Engineer will permit lane closures only from 8:30 A.M. to 3:30 P.M. Exceptions to the above lane closure hours shall require the Engineer's acceptance in writing.

The Engineer will permit the Contractor to close only one lane of traffic during its working hours. During non-working hours, keep all lanes open to traffic and allow traffic to flow at the normal posted speed limit.

Failure to open lanes to traffic beyond the above lane closure hours shall result in assessment of liquidated damages as specified in Section 108.08 - Liquidated Damages and Failure to Complete on Time.

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

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

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

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

The Engineer will consider payment for furnishing, placing, maintaining and removing the advisory signs and insuring safe and accessible passage for pedestrians included in the bid price of the various contract items. The Engineer will pay additional advisory signs as

specified by the Engineer under Additional Police Officers and/or Additional Traffic Control Devices.

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

- (1) detours - 8 weeks, and
- (2) lane closures - 6 weeks.

Also, these requests shall include:

- (1) An explanation of proposed changes to the existing traffic pattern;
- (2) A schedule of when installing informational and traffic control signs;
- (3) A schedule of when publishing advertisements;
- (4) A plan showing the proposed informational and traffic control signs; and
- (5) A plan showing the lane changes or detours. Plans for multi-lane highway lane changes and detours shall include details of the beginning of the lane changes or detours.

The Engineer will not make payment for reviewing request submittals.

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

- (1) Detours;
  - (2) Lane closure;
  - (3) Permanent road closure; and
  - (4) Permanent new route that changes a previous route.
- The advertisement shall contain the following information:
- (1) Map of traffic pattern change limits;
  - (2) Map showing lane(s) closure and detour pattern;

- (3) Notice of starting and ending dates and duration; and
- (4) Explanation of the lane(s) closure or detours "Notice To Motorist".

The quality of the map shall be as follows:

- (1) The Department will not allow free hand printing or pencil;
- (2) Highlight important feature in bold letters by darkening, cross-hatching, crossing-out or coloring;
- (3) Minimum size shall be five columns wide and four columns deep. Lesser width columns may be considered to balance against the size of the drawing;
- (4) Text Specifications.
  - (a) Work being featured - 3/16 inch text
  - (b) Major roads and features - 1/8 inch text
  - (c) Other roads and features- first letter upper case
  - (d) "Notice to Motorists" in upper case
  - (e) Message - first letter upper case
- (5) Line Thickness.
  - (a) Important feature being advertised - thicker than rest of map
  - (b) Directional arrow - bolder than the rest of the lines shown on the map, when important, to show the route traffic should use.
- (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.

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

(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) Move **Subsection 105.19 Value Engineering** to this Section and make it read as "**Subsection 104.10 Value Engineering**".

(X) Amend **Subsection 105.19 Value Engineering** by revising the first sentence of the first paragraph to read as follows:

"Projects shall be eligible for Value Engineering Change Proposals (VECP). In accordance with Section 103D-411, HRS, on projects with contract amounts in excess of \$250,000 the following Value Engineering Incentive Clause shall apply to allow the Contractor to share in cost savings that ensue from cost reduction proposals, hereinafter referred to as Value Engineering Change Proposal (VECP), submitted by the Contractor."

(XI) Add the following:

**"104.11 Variations in Estimated Quantities.** Where the quantity of a unit price item in this contract is estimated on the proposal schedule and where the actual quantity of such pay item varies more than 15 percent above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. The adjustment shall be subject to Subsection 104.09 – Method of Price Adjustment and Subsection 109.04(A) - Allowances for Overhead and Profit."

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

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

(2) Unknown physical conditions at the site of an unusual nature, which differ materially from those ordinarily encountered

and generally recognized as inherent in work of the character provided for in this Contract.

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

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

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

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

**104.13 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 protest not later than three days after receipt of the field order. The protest shall be determined as provided in Subsection 105.18 - Claims for Adjustment and Disputes and shall constitute compliance with the notice requirement of Subsection 105.18(1). However, the Contractor must proceed with the work without delay upon receipt of the field order. In the written protest the Contractor shall provide details of all reasons for its protest of the field order. Failure to file the written protest 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 and will not be waived.

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

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

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

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

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

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

If the Engineer refuses to accept the Contractor's entire proposal, the Engineer may issue a field order for the work; or if a field order has already been issued, the Engineer may issue a supplemental field order establishing new contract prices, the remaining adjustments to contract price and /or contract time for the ordered changes. If the Contractor disagrees with any term, condition or adjustment contained in such field order or supplemental field order, it shall follow the protest procedures set forth in and be subject to the other terms of Subsection 104.13 - Field Order."

#### **END OF SECTION**

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