

1 Amend **Section 106 – Control Of Material** to read as follows:

2
3 **“SECTION 106 - CONTROL OF MATERIAL**

4
5 **“106.01 Source of Supply and Quality Requirements.** The Contractor shall
6 furnish, pay for, and install all materials required to complete the work, except
7 materials that are designated in the contract documents to be furnished by the
8 State. Materials shall be in new condition as of the time of final acceptance
9 subject to normal wear.

10
11 All materials proposed to be used may be inspected and tested at any
12 time and place including but not limited to the source of supply and locations of
13 manufacture and fabrication. When requested by the Engineer, the Contractor
14 shall notify the Engineer of the Contractor’s proposed sources of materials prior
15 to delivery. At the request of the Engineer, the Contractor shall provide
16 reasonable and adequate testing facilities and equipment for the Engineer at the
17 inspection site, at no cost to the State.

18
19 **106.02 Material Sources.** With the written permission of and subject to
20 conditions set by the Engineer, the Contractor may, at no cost to the State, use
21 stone, gravel, sand, or other materials found within the project limits. Such
22 permission will not be considered a change and may be revoked at any time for
23 any reason by the Engineer at no cost to the State.

24
25 The contract documents or Engineer may make available to the
26 Contractor the option to use material from sources made available by the State.
27 Designation of a source for material is not a representation by the Engineer of
28 the quantity or quality of material obtainable or the method, equipment or work
29 required to obtain material from the source. The Contractor is not obligated to
30 use material from such sources. The Contractor bears all costs of using such
31 material and assumes the risk that such material does not conform to contract
32 requirements.

33
34 **106.03 Material Sample; Sample Submittals; Notice of Change.**

35
36 **(A) Material Sample.** Submission of material and equipment samples
37 required by the contract documents or by the Engineer are exclusively for
38 the benefit of the State’s quality control monitoring of the project. Any
39 statement or representation by the Engineer that any submitted sample is
40 “ACCEPTED”, “APPROVED”, or other words to similar effect, shall not
41 be deemed conclusive that the material and equipment for which a
42 sample was submitted will conform to the contract requirements when
43 incorporated into the work. The “ACCEPTANCE” or “APPROVAL” of any
44 sample by the Engineer does not change or modify any contract
45 requirements.

47 The Engineer may require any or all materials to be tested or
48 retested by means of samples or otherwise at any time. The Contractor
49 shall collect and forward samples requested by the Engineer. In all
50 cases, the Contractor shall furnish the required samples at no cost to the
51 State. The Contractor shall not be entitled to payment for work that
52 incorporates materials required to be tested or inspected until the
53 Engineer completes the tests or inspections. Where samples are
54 required from the completed work, the Contractor shall cut and furnish
55 samples from the completed work at the sites and quantities designated
56 by the Engineer. Samples so removed shall be replaced with material
57 conforming to the contract requirements and refinished. No additional
58 compensation will be allowed for the replacement of the sample with new
59 material.
60

61 Tests of the material samples will be made in accordance with the
62 latest standards of HDOT Hawaii Test Methods, AASHTO, ASTM, or
63 other recognized material organization specified in the contract
64 documents as amended prior to the date of advertisement unless
65 otherwise provided. References to HDOT Hawaii Test Method means
66 "Hawaii Test Methods", published by the State of Hawaii, Department of
67 Transportation, Highways Division, Materials Testing and Research
68 Branch. The Engineer shall decide the tests and standards to be applied,
69 whether a submitted material sample passes the tests and/or meets the
70 standards, and whether a submitted material sample shall be retested.
71

72 Each sample submitted shall have a label indicating project title
73 and number, the material represented, its place of origin, the names of
74 the producers and suppliers, the Contractor, and the portion of the work
75 for which the material is intended. Samples shall be marked to indicate
76 where the materials represented are required by the contract documents.
77

78 A letter in duplicate shall accompany each delivery of samples and
79 shall contain a list of the samples and the same information required on
80 the labels accompanying each sample.
81

82 **(B) Sample Submittals.**
83

84 **(1) Contractor's Duty.** When sample submittals are required
85 by the contract documents, the Contractor shall review, approve,
86 indicate its approval and submit to the Engineer samples of the
87 materials to be used in the work. It is the responsibility of the
88 Contractor to submit required material and color samples for review
89 at the earliest possible date after the date of award. Delays
90 caused by the failure of the Contractor to submit material and color
91 samples will not be considered as justifiable reasons for contract
92 time extension or additional compensation.

93 (2) **Deviations.** The Contractor shall include with the submittal
94 of samples written notification of, and shall clearly identify, all
95 deviations from the contract documents. Failure to so notify the
96 Engineer of, and identify, such deviations shall be grounds for the
97 subsequent rejection of the related work or materials,
98 notwithstanding that the sample upon its submittal was accepted by
99 the Engineer. Any deviations will be subject to Subsection 102.16
100 – Substitution of Materials and Equipment. If the deviations are
101 not acceptable to the Engineer, the Contractor shall be required to
102 furnish the samples as specified or indicated on the contract
103 documents at no additional cost or time.
104

105 (3) **Review Process.** The Engineer will inspect or test samples
106 and communicate the results of the inspection or test within 45
107 days of receipt unless otherwise agreed between the Contractor
108 and the Engineer or as stated in the contract documents. If the
109 volumes of samples submitted at any time for review is unusually
110 large, the Contractor may inform the Engineer of its preferred
111 order for review and the Engineer will use reasonable efforts to
112 accommodate the Contractor's priorities.
113

114 If the Engineer notifies the Contractor that a sample does
115 not conform to the contract documents, the Contractor shall
116 promptly submit a sample conforming to the requirements of the
117 contract documents, indicating in writing on the transmittal and the
118 subject sample what portions of the resubmittal have been altered.
119

120 No mark or notation made by the Engineer on or
121 accompanying the return of any sample to the Contractor shall be
122 considered a request or order for a change or extra work. If the
123 Contractor believes any such mark or notation constitutes a
124 request for a change or extra work for which it is entitled to an
125 adjustment in contract price and/or time, the Contractor must
126 follow the procedures established in Subsection 104.02 – Changes
127 for oral orders, directions, instructions, interpretations, or
128 determinations from the Engineer or else lose its right to claim for
129 an adjustment.
130

131 (C) **Notice of Change.** If during the course of the work the Contractor
132 intends to change the source of supply of any previously submitted
133 material, or the location of any manufacturing or fabrication plant, the
134 Contractor shall provide the Engineer written notice of such intended
135 change not less than ten days before the change is made.
136

137 **106.04 Plant Inspection.** (Unassigned). (See 105.11 – Inspection of the
138 Work and Materials).

139 **106.05 Storage and Handling of Materials.** The Contractor as part of the
140 contract price shall provide all storage space. Materials shall be stored and
141 handled to preserve their quality and fitness for the work. Stored materials shall
142 be located so as to facilitate their prompt inspection by the Engineer. Unless
143 otherwise provided by the contract documents or by separate written agreement
144 with the State, no site within the project limits may be used for storage purposes
145 or for the placing of the Contractor's plant and equipment. Prior to final
146 inspection, the Contractor at no additional cost to the State shall restore all
147 storage sites within the project limits to their pre-existing or similar condition.
148

149 **106.06 Handling Materials.** (Unassigned). (See 106.05 – Storage
150 and Handling of Materials).
151

152 **106.07 Non-Conforming Materials.** All materials not conforming to the
153 contract requirements, whether in place or not, shall be promptly removed from
154 the site of the work when directed by the Engineer in writing. If the Contractor
155 fails to comply forthwith with any order of the Engineer made under the
156 provisions of this subsection, the Engineer shall have the authority to remove
157 and replace non-conforming materials and charge the removal and replacement
158 to the Contractor.
159

160 **106.08 State-Furnished Material.** The Contractor shall furnish all materials
161 required to complete the work, except those specified to be furnished by the
162 State. The contract documents or the Engineer will establish the time and
163 means of delivery or the turning over of State-furnished materials.
164

165 Unless otherwise stated in the contract documents, it shall be
166 conclusively presumed that State-furnished materials conform to the contract
167 documents as of the time of delivery to the Contractor
168

169 Upon receipt, the Contractor shall inventory, store, inspect, protect,
170 distribute, and install State-furnished material at its risk and cost."
171

172 **106.09 Special Test Methods.** (Unassigned). (See 106.03 (A)- Material
173 Sample).
174

175 **106.10 Certificate of Compliance.** In addition to or instead of the
176 submission of material samples or equipment for inspection or testing, the
177 Engineer or the contract documents may require the Contractor to submit to the
178 Engineer a Certificate of Compliance from the manufacturer and/or supplier.
179

180 A Certificate of Compliance shall be an English language document
181 containing:
182

- 183 (1) A description of the material supplied.
184

185 (2) Means of material identification, including but not limited to label,
186 lot number, heat number, batches, or marking including the respective
187 quantities of each supplied for the work.
188

189 (3) Statement that the material complies in all respects with the
190 requirements of the cited specifications within the contract documents.
191

192 (4) When required by the Engineer, test results confirming that the
193 material complies in all respect with the requirements of the contract
194 documents.
195

196 (5) The name, title, and signature of the authorized person acting on
197 behalf of the manufacturer or the supplier of the material, the date of the
198 signature, and the name and address of the manufacturer or supplier of
199 the material.
200

201 **106.11 Steel and Iron Construction Material.** The major quantities of steel
202 and iron construction material that is permanently incorporated into the project
203 shall consist of American-made materials only.
204

205 The Contractor may utilize minor amounts of foreign steel and iron in this
206 project provided the cost of the foreign material used does not exceed one-tenth
207 of one percent of the total contract cost or \$2,500.00, whichever is greater.
208

209 American-made material is defined as material having all manufacturing
210 processes occur in the United States. The action of applying a coating to steel
211 or iron is deemed a manufacturing process. Coating includes epoxy coating,
212 galvanizing, aluminizing, painting, and any other coating that protects or
213 enhances the value of steel or iron. Any process from the original reduction
214 from ore to the finished product constitutes a manufacturing process for iron.
215 The following are considered to be steel manufacturing processes.
216

217 (1) Production of steel by any of the following processes:
218

219 (a) Open hearth furnace.
220

221 (b) Basic oxygen.
222

223 (c) Electric furnace.
224

225 (d) Direct reduction.
226

227 (2) Rolling, heat treating, and any other similar processing.
228

229 (3) Fabrication of the products.

- 230 (a) Spinning wire into cable or strand.
231
232 (b) Corrugating and rolling into culverts.
233
234 (c) Shop fabrication.
235

236 A certification of materials origin will be required for any items comprised
237 of, or containing steel or iron construction materials prior to such items being
238 incorporated into the permanent work.
239

240 **106.12 Recycling of Waste Glass.** (Unassigned). (See 717 - Cullet and
241 Cullet-Made Materials).
242

243 **106.13 Payment for Deleted Materials.**
244

245 **(A) Canceled Orders.** If acceptable material was ordered by the
246 Contractor for any item deleted by an ordered change in the work prior to
247 the date of notification of such deletion by the Engineer, the Contractor
248 shall use its best efforts in a timely manner to cancel the order. The State
249 will pay reasonable cancellation charges required by the supplier. The
250 Contractor will be paid an additional 7 percent markup on all reasonable
251 cancellation charges for compensation for overhead and profit.
252

253 **(B) Returned Materials.** If acceptable deleted material is in the
254 possession of the Contractor or is ultimately received by the Contractor, if
255 such material is returnable to the supplier and the Engineer so directs, the
256 material shall be returned. After the Contractor returns acceptable
257 material to the supplier, the State will pay for the reasonable charges
258 made by the supplier or other source for the return of the material. The
259 Contractor shall be paid a markup for overhead and profit on charges
260 made by the supplier. The Contractor shall be paid a 7 percent markup
261 on the reasonable charges made by the supplier or other source for
262 returning the material for compensation for overhead and profit. The
263 cost to the Contractor for handling the returned material will be paid as
264 provided in Subsection 104.06 - Methods of Price Adjustment.
265

266 **(C) Uncanceled Material.** If orders for acceptable material that was
267 deleted cannot be canceled at a reasonable cost or returned, it will be
268 paid for at the actual cost to the Contractor including a markup for
269 overhead and profit of 7 percent. In such cases the material paid for
270 shall become the property of the State and the cost of further storage and
271 handling will be paid as provided in Subsection 104.06 - Methods of Price
272 Adjustment.
273
274
275

276 All charges the Contractor proposes for the acceptable material
277 that was deleted shall be properly itemized and supported by sufficient
278 substantiating legible data to permit evaluation. The Engineer will
279 determine whether the proposal is acceptable.
280

281 **106.14 Assignment Of Antitrust Claims For Overcharges For Goods and**
282 **Materials Purchased.** Vendor and purchaser recognize that in actual
283 economic practice, overcharges resulting from antitrust violations are in fact
284 usually borne by the purchaser. Therefore, vendor hereby assigns to purchaser
285 any and all claims for such overcharges as to goods and materials purchased in
286 connection with this order or contract, except as to overcharges which result
287 from antitrust violations commencing after the price is established under this
288 order or contract and which are not passed on to the purchaser under an
289 escalation clause.
290

291 Contractor and owner recognize that in actual economic practice,
292 overcharges resulting from antitrust violations are in fact usually borne by the
293 owner. Therefore, Contractor hereby assigns to owner any and all claims for
294 such overcharges as to goods and materials purchased in connection with this
295 order or contract, except as to overcharges which result from antitrust violations
296 commencing after the price is established under this order or contract and any
297 contract change order. In addition, Contractor warrants and represents that
298 each of its first tier suppliers and subcontractors shall assign any and all such
299 claims to owner, subject to the aforementioned exception.
300

301 **106.15 Unauthorized Excavation.** Unless otherwise expressly directed or
302 authorized by the contract documents, Contractor shall not excavate beyond the
303 excavation limits for the purpose of obtaining materials. The site disturbed by
304 unauthorized excavation shall be returned to the condition existing before such
305 unauthorized excavation at no cost to the State. Any unauthorized excavation
306 shall be filled, at the direction of the Engineer, with either the material taken out
307 or a substitute material selected by the Engineer."
308
309

310 **END OF SECTION**
311