

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

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3       Make the following amendments to said Section:

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

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9       **“(A) Obligation of Contractor.** Contractor shall not commence any  
10       work until it obtains, at its own expense, all required insurance described  
11       herein. Such insurance shall be provided by an insurance company  
12       authorized by the laws of the State to issue such insurance in the State of  
13       Hawaii. Coverage by a “Non-Admitted” carrier is permissible provided the  
14       carrier has a Best’s Rating of “A-VII” or better. The Contractor shall  
15       maintain and ensure all insurance policies are current for the full period of  
16       the contract until final acceptance of the work by the State.  
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18       The Certificate of Insurance shall contain: a clause that it is agreed  
19       that any insurance maintained by the State of Hawaii will apply in excess  
20       of, and not contribute with, insurance provided by this policy; and shall be  
21       accompanied by endorsement form CG2010 or equivalent naming the  
22       State as an additional insured to the policy which status shall be  
23       maintained for the full period of the contract until final acceptance of the  
24       work by State.  
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26       The Contractor shall obtain all required insurance as part of the  
27       contract price. Where there is a requirement for the State of Hawaii and  
28       its officers and employees to be named as additional insureds under any  
29       Contractor’s insurance policy, before the State of Hawaii issues the Notice  
30       to Proceed, the Contractor shall obtain and submit to the Engineer a  
31       Certificate of Insurance and a written policy endorsement that confirms the  
32       State of Hawaii and its officers and employees are additional insureds for  
33       the specific State project number and project title under such insurance  
34       policies. The written policy endorsement must be issued by the insurance  
35       company insuring the Contractor for the specified policy type or by an  
36       agent of such insurance company who is vested with the authority to issue  
37       a written policy endorsement. The insurer’s agent shall also submit  
38       written confirmation of such authority to bind the insurer. Any delays in  
39       the issuance of the Notice to Proceed attributed to the failure to obtain the  
40       proof of the State of Hawaii and its officers and employees’ additional  
41       insured status shall be charged to the Contractor.  
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46 A mere Certificate of Insurance issued by a broker who represents  
47 the Contractor (but not the Contractor's insurer), or by any other party who  
48 is not authorized to contractually name the State as an additional insured  
49 under the Contractor's insurance policy, is not sufficient to meet the  
50 Contractor's insurance obligations.

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

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

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75 All insurance described herein shall be primary and cover the  
76 insured for all work to be performed under the contract, all work performed  
77 incidental thereto or directly or indirectly connected therewith, including  
78 but not limited to traffic detour work, barricades, warnings, diversions, lane  
79 closures, and other work performed outside the work area and all change  
80 order work.

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82 The Contractor shall, from time to time, furnish the Engineer, when  
83 requested, satisfactory proof of coverage of each type of insurance  
84 required covering the work. Failure to comply with the Engineer's request  
85 may result in suspension of the work, and shall be sufficient grounds to  
86 withhold future payments due to the Contractor and to terminate the  
87 contract for Contractor's default.

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89 **(B) Types of Insurance.** Contractor shall purchase and maintain  
90 insurance described below which shall provide coverage against claims  
91 arising out of the Contractor's operations under the contract, whether such

operations be by the Contractor itself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

**(1) Workers' Compensation.** The Contractor shall obtain worker's compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker's Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.

**(2) Auto Liability.** The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a Combined single Limit of not less than \$1,000,000 per occurrence for bodily injury and property damage with the State of Hawaii named as additional insured. Refer to SPECIAL CONDITIONS for any additional requirements.

**(3) General Liability.** The Contractor shall obtain General Liability insurance with a limit of not less than \$2,000,000 per occurrence and in the Aggregates for each of the following:

- (a)** Products - Completed/Operations Aggregate,
- (b)** Personal & Advertising Injury, and
- (c)** Bodily Injury & Property Damage

The General Liability insurance shall include the State as an Additional Insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies. Refer to SPECIAL CONDITIONS for any additional requirements.

**(4) Builders Risk For All Work.** The Contractor shall take out a policy of builder's risk insurance for the full replacement value of the project work; from a company licensed or otherwise authorized to do business in the State of Hawaii; naming the State as an additional insured under each policy; and covering all work, labor, and materials furnished by such Contractor and all its subcontractors against loss by fire, windstorm, tsunamis, earthquakes, lightning, explosion, other perils covered by the standard Extended Coverage Endorsement, vandalism, and malicious mischief. Refer to SPECIAL CONDITIONS for any additional requirements."

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

**“107.18 Citizen and Residential Labor Force.**

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

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

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

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

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

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

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

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

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

**END OF SECTION 107**