

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 to 81 to  
7           read as follows:

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9           **“(A) Obligation of Contractor.** Contractor shall not commence any work  
10           until it obtains, at its own expense, all required insurance described herein.  
11           Such insurance shall be provided by an insurance company authorized by  
12           the laws of the State to issue such insurance in the State of Hawaii.  
13           Coverage by a “Non-Admitted” carrier is permissible provided the carrier  
14           has a Best’s Rating of “A-VII” or better. The Contractor shall maintain and  
15           ensure all insurance policies are current for the full period of the contract  
16           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 State  
22           as an additional insured to the policy which status shall be maintained for  
23           the full period of the contract until final acceptance of the work by State.

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25                       The Contractor shall obtain all required insurance as part of the  
26           contract price. Where there is a requirement for the State of Hawaii and its  
27           officers and employees to be named as additional insureds under any  
28           Contractor’s insurance policy, before the State of Hawaii issues the Notice  
29           to Proceed, the Contractor shall obtain and submit to the Engineer a  
30           Certificate of Insurance and a written policy endorsement that confirms the  
31           State of Hawaii and its officers and employees are additional insureds for  
32           the specific State project number and project title under such insurance  
33           policies. The written policy endorsement must be issued by the insurance  
34           company insuring the Contractor for the specified policy type or by an agent  
35           of such insurance company who is vested with the authority to issue a written  
36           policy endorsement. The insurer’s agent shall also submit written  
37           confirmation of such authority to bind the insurer. Any delays in the  
38           issuance of the Notice to Proceed attributed to the failure to obtain the proof  
39           of the State of Hawaii and its officers and employees’ additional insured  
40           status shall be charged to the Contractor.

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A mere Certificate of Insurance issued by a broker who represents the Contractor (but not the Contractor's insurer), or by any other party who is not authorized to contractually name the State as an additional insured under the Contractor's insurance policy, is not sufficient to meet the Contractor's insurance obligations.

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

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

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

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

**(B) Types of Insurance.** Contractor shall purchase and maintain insurance described below which shall provide coverage against claims arising out of the Contractor's operations under the contract, whether such operations be by the Contractor itself or by any subcontractor or by

88 anyone directly or indirectly employed by any of them or by anyone for  
89 whose acts any of them may be liable.

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

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

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

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110 (a) Products - Completed/Operations Aggregate,  
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112 (b) Personal & Advertising Injury, and  
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114 (c) Bodily Injury & Property Damage  
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116 The General Liability insurance shall include the State as an  
117 Additional Insured. The required limit of insurance may be provided  
118 by a single policy or with a combination of primary and excess  
119 policies. Refer to SPECIAL CONDITIONS for any additional  
120 requirements.

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122 **(4) Builders Risk For All Work.** The Contractor shall take out a  
123 policy of builder's risk insurance for the full replacement value of the  
124 project work; from a company licensed or otherwise authorized to do  
125 business in the State of Hawaii; naming the State as an additional  
126 insured under each policy; and covering all work, labor, and materials  
127 furnished by such Contractor and all its subcontractors against loss  
128 by fire, windstorm, tsunamis, earthquakes, lightning, explosion, other  
129 perils covered by the standard Extended Coverage Endorsement,  
130 vandalism, and malicious mischief. Refer to SPECIAL CONDITIONS  
131 for any additional requirements."  
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133 (II) Add **Section 107.18 Citizen and Residential Labor Force** after line 745  
134 to read as follows:

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136 **“107.18 Citizen and Residential Labor Force.**

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

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144 (B) **Residential Labor Force.** In accordance with Act 192; SLH 2011,  
145 no less than eighty (80) percent of the bidder's labor force working on the  
146 contract shall be provided by Hawaii residents. This act applies to all  
147 construction procurements under HRS Chapter 103D; however this act  
148 does not apply to procurements for professional services under Section  
149 103D-304 and small purchases under Section 103D-305. This act is also  
150 applicable to any subcontract of \$50,000.00 or more in connection with this  
151 contract.

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

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

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

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

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172 (1) With respect to the General Contractor, withholding of  
173 payment on the contract until the Contractor or its Subcontractor  
174 complies with HRS Chapter 103B as amended by Act 192, SLH  
175 2011.

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

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

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**END OF SECTION 107**